

CR-4341-2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-4341-2015 (O&M).
Decided on: July 13, 2015.**

Kulwinder Singh

..... Petitioner(s)

Versus

Harbhajan Singh

..... Respondent(s)

*** * ***

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Kunal Mulwani, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL)

This is defendant's revision petition against the order dated 13.4.2015 allowing the plaintiff-respondent to amend the plaint enabling him to describe the property with khasra numbers which was not originally mentioned in the plaint as the property in dispute had earlier been described with boundaries only.

Counsel for the petitioner has vehemently contended that the suit had been filed in the year 2012. The defendant – petitioner had specifically taken up the plea in the written statement that the defendant had filed an application before the trial Court before filing the written statement to the effect that the plaintiff has not given the description of the property and that he will produce particulars regarding the ownership of the suit property. A copy of the said application has been placed on record as Annexure P2,

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indicating that the defendant had sought the information regarding khasra number or property number regarding the shop in dispute. He has relied upon judgment in **Vidyabai and others Vs. Padmalatha and another, 2009 (1) RCR (Civil) 763**, in support of his contention that a Court has no jurisdiction to allow the amendment of pleadings after commencement of the trial and the trial will be deemed to have commenced after framing of issues. It has been submitted that in the present case, the issues were framed on 12.12.2013.

He has also relied upon judgment in **Paal Kaur Vs. M/s Dhamotia and Company Property Dealers and others 2012 (4) PLR 307**, in support of his contention that after commencement of the suit the amendment cannot be allowed. He has referred to the facts and circumstances of the case wherein the defendant in his written statement had mentioned the area of the property in dispute and brought it to the notice of the Court regarding the said infirmity but the application for amendment of the plaint was dismissed. The said order was upheld by this Court holding that the proposed amendment of the plaint seeking to incorporate the inadvertent error regarding the area of the plots in dispute was not permissible and that no amendment can be allowed after commencement of the trial.

I have heard the counsel for the petitioner and carefully gone through the nature of the controversy in the present case.

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The plaintiff-respondent filed a suit for possession of shop by describing the property by boundaries. The defendant has taken up the plea that he has become owner of the property by adverse possession besides resisting the suit on the ground that the property has not been described properly in the plaint.

Counsel for the petitioner has drawn attention of the Court to the application Annexure P2 filed by the defendant for a direction to the plaintiff to produce the title and better particulars regarding the ownership of the suit. He filed reply Annexure P3 pleading therein that building in which the shop in dispute is located is built in Khewat No.68/66, Khatauni No.92 and Khasra No.95 of village Koopur, Adda Kathar, Tehsil and District Jalandhar in which plaintiff is owner to the extent of 1/3 share as per entries in the jamabandi for the year 2006-2007. He has argued that the application and reply was filed in the year 2012 as such, the plaintiff will be deemed to have knowledge about the khasra numbers and boundaries at the time of filing of the suit. He cannot be permitted to amend the plaint after commencement of the suit. He has also submitted that the plaintiff has wrongly taken up a plea in the application for amendment that he had come to learn about the khasra numbers during pendency of the proceedings.

After hearing the counsel for the petitioner, I am of the opinion that the plaintiff certainly had knowledge regarding the khasra numbers and location of the shop in dispute but he had

described the property by boundaries opting not to mention the khasra numbers despite an objection raised by the defendant in the written statement. The subject matter of the suit is immovable property and it had to be described as per the provisions of Order VII Rule 3 CPC.

Order VII Rule 3 CPC reads as follow: -

“ORDER VII- PLAINT

1. * * * * * * * * *
2. * * * * * * * * *
3. *Where the subject-matter of the suit is immovable property— Where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.”*

A perusal of the said provision indicates that it is the duty of the plaintiff to describe the property in dispute in such a manner that it is identified by boundaries or by numbers in record of settlement or survey. The plaintiff should specifically state boundaries or numbers.

On asking of the Court, counsel for the petitioner-defendant has submitted that the defendant has not raised claim in context to any other shop and that the dispute pertains to the shop in dispute which is in possession of the defendant and that the

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defendant claims to have become owner of the same by way of adverse possession having acquired the title. He has specifically denied that plaintiff is owner of the shop in dispute.

Taking into consideration, the nature of the controversy between the parties where the description of the subject matter i.e., shop in dispute is not in issue, the plaintiff-respondent having been permitted to describe the property in consonance with the provisions of law mentioned hereinabove that the khasra numbers were known to him earlier. It was within the jurisdiction of the trial Court under Order VI Rule 17 CPC, to permit the plaintiff to describe the property so that real question in controversy between the parties can be adjudicated finally. No doubt an application has been filed for amendment after commencement of the trial but no prejudice seems to have been caused to the defendant- petitioner by allowing the amendment.

In view of above, this petition is disposed of with clarification that the defendant- petitioner will be permitted to amend the written statement and seek an opportunity to resubmit all the witnesses of the plaintiff who have deposed regarding the description of the property as the defendant claims that in the garb of amendment, the plaintiff seeks to grab the property of the defendant despite he being not owner of the specific khasra numbers.

July 13, 2015.
rka

(M.M.S. BEDI)
JUDGE