

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 4486 of 2014

Date of Decision: 08.05.2015

Santokh Singh

.....Petitioner

Vs.

Malkit Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. G.S. Brar, Advocate,
for the petitioner.

Mr. S.K. Virk, Advocate,
for the respondents.

SABINA, J.

Petitioner has filed this petition challenging the order dated 19.05.2014, whereby application moved by the petitioner under Order 06 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for permission to amend the written statement, was dismissed.

Learned counsel for the petitioner has submitted that the suit is at an initial stage. Issues are yet to be framed on the pleadings of the parties. In fact he had earlier claimed ownership qua the suit property but now he also wanted to take up the plea qua ownership on the basis of adverse possession.

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that the petitioner cannot

be allowed to set up a new plea by way of amendment.

Order 6 Rule 17, CPC, reads as under:-

Amendment of pleadings:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, as per the above provision, parties can be permitted to amend their pleadings but no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of trial.

In the present case, respondents No. 1 and 2 have filed suit for possession claiming themselves to be owners of the property, in question. Petitioner in his written statement (Annexure P-2) claimed himself to be owner in possession of the property, in question. Before the issues could be framed, petitioner moved an application for permission to amend the written statement. By way of amendment, petitioner wants to set up an additional plea qua

ownership of the suit property by way of adverse possession. The said plea now sought to be put up by the petitioner can be said to be an alternative plea. Since the suit was at an initial stage, the learned trial Court fell in error while dismissing the application, moved by the petitioner under Order 6 Rule 17, CPC for permission to amend the written statement.

Accordingly, this petition is allowed. Impugned order dated 19.05.2014 is set aside. Consequently, application moved by the petitioner under Order 6 Rule 17, CPC, for permission to amend the written statement is allowed.

**(SABINA)
JUDGE**

May 08, 2015
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