

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.4995 of 2014.

Decided on:-May 27th, 2015.

Manjit Singh.

.....Petitioner.

Versus

Sham Singh.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. N.K. Vadehra, Advocate
for the petitioner.

Mr. D.S. Malwai, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Vide this civil revision petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner-defendant assails order dated 27.5.2014 (Annexure P-5) passed by the lower court vide which amendment sought by the respondent-plaintiff in the plaint, was allowed.

2. It is claimed that after framing of the issues, amendment could not have been allowed and thus, the order is neither valid nor legal.

3. Counsel for the respondent, on the other hand, has urged that when the amendment sought for neither changes the nature of the suit nor brings in facts forming new cause of action, and rather is required for

determining the real questions in controversy between the parties and for effective adjudication of the dispute, the same is to be allowed.

4. During the course of arguments addressed by counsel for the parties, perusal of the paper book and consideration of the attending circumstances reveals that during the pendency of the suit for possession filed by the respondent/plaintiff, Punjab Government had acquired part of the suit land for construction of south bye-pass. Information about acquisition was received by the plaintiff only on 15.3.2011 when he was asked to collect the Award amount. As a sequel to this acquisition, share of the plaintiff in the total area for which the plaintiff had filed the suit, had decreased. It was thus an important subsequent event on account of acquisition of share of the plaintiff in land that the amendment in the plaint had become necessary.

5. Plea of the petitioner-defendant that the application had been filed just to delay and dilate the proceedings, whereas the amendment was neither necessary nor was required for adjudication of the matter in controversy, is not tenable.

6. At this stage, reference may be made to Rule 17 of Order VI CPC which provision for ready reference, is appended as below:

“17. 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”

7. When the amendment sought for by the respondent-plaintiff in

the plaint is of such a nature that it goes to the root of the dispute and is also subsequent to filing of the suit, it becomes necessary to allow it for proper, complete and effective adjudication of the dispute. It is to be noted that the amendment sought for is necessary because:

- (i) It would avoid multiplicity of proceedings. There is change of circumstances after filing of the plaint. Nature and extent of suit land has changed consequent upon acquisition of part of it by the Government of Punjab;
- (ii) Complete and wholesome adjudication would be made only when amendment is carried out in the plaint;
- (iii) Amendment does not alter the character or cause of action in the suit;
- (iv) No surprise is being sprung on the opposite party; and,
- (v) No injustice or prejudice is going to be caused to the petitioner-defendants.

8. In addition to the above-mentioned points, it is also to be noticed that the Court itself had felt it necessary to introduce the amendment in the plaint “for proper adjudication of the case”.

9. In view of the discussion as above, with due deference to the law laid down in the authority cited as ***Vidyabai and others Versus Padmalatha and another 2009(1) RCR (Civil) 763 (Supreme Court)*** that after commencement of the trial i.e. after framing of issues and examination of the witnesses, no amendment in a written statement can be allowed, and in the interface of peculiar circumstances of this case, does not support the cause of the petitioner.

10. Counsel for the respondent-plaintiff, on the other hand, has sought support from ***Puran Ram Versus Bhaguram and another 2008(2) RCR (Civil) 499 (Supreme Court)*** to contend that the Court has discretion to allow amendment in pleadings where it is thought necessary for complete

adjudication of the case. In this case, the court itself had strongly felt the need for introduction of amendment in the plaint for “proper adjudication of the case”.

11. In ***Abdul Rehman and another Versus Mohd. Ruldu and others 2012(4) RCR(Civil) 481 (SC)***, Hon'ble Apex Court had held that the power of amendment should be exercised in the larger interest of doing full and complete justice between the parties. In ***Sampath Kumar Versus Ayyakannu and another 2002(3) Civil Court Cases 364 (SC)*** holding that merits of the averments sought to be incorporated by way of amendment, are not to be judged at the stage of allowing prayer for amendment, it was observed that to avoid multiplicity of litigation, amendment, if necessary, should be allowed. Even in ***Surender Kumar Sharma Versus Makhan Singh 2009(4) RCR (Civil) 597 (SC)***, Hon'ble Apex Court has held that amendment should be allowed if the same is necessary for doing the complete justice. Support in this regard has also been sought from ***Shashikant Jagannath Powar Versus Baburao Huvappa Kurhade 2013(2) Civil Court Cases 454 (Bombay)***; ***Gurmail Singh @ Kaka Singh Versus Ran Singh and others 2012(3) PLR 65 (P&H)***; ***Kailash and another Versus Yasina and others 2009(4) PLR 702 (P&H)***; ***Lallu Versus Nirdosh Kumar 2010(7) RCR (Civil) 2026 (P&H)***; ***Sumeer Jassal Versus Smt. Pushpa Rani and others 2012(3) PLR 311 (P&H)***; ***Jagnabalkya Chakraborty Versus Bidyarthi Chakraborty and others 2006 AIR (Gauhati) 120***; ***Ambeshwar Grih Nirman Sahakari Ltd. Versus Pawan Kumar Sharma and others 2010(7) RCR (Civil) 2948 (Rajasthan)***; ***Ashwani Kumar Aggarwal Versus Shanti Lal 2008(2) RCR (Civil) 452 (P&H)*** and ***Shakuntala Balasaheb Balsaraf since deceased through her legal heirs and others Versus Ramdas son of Laxman Balsaraf and others 2013(2) Civil Court Cases 375 (Bombay)***. In all these authorities, it has been held that if the amendment incorporates the subsequent events or even

otherwise is necessary for complete and effective adjudication of the matter, the same should be allowed.

12. Considering the matter from all angles, plea of the defendant, petitioner herein, that the amendment allowed by the lower court was neither necessary nor required, is found to be devoid of merit.

13. Keeping in view the totality of facts and circumstances as discussed earlier, the application for amendment was rightly allowed by the lower court vide impugned order dated 27.5.2014.

14. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

15. Parties are directed to appear before the lower court on 2nd of July, 2015.

May 27th, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes