

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

CR No.5750 of 2015.

Date of Decision: 03.09.2015.

Tara Chand

....Petitioner.

VERSUS

Raj Bala

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kulvir Narwal, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this petition under Article 227 of Constitution of India, petitioner has sought setting aside the order dated 14.08.2015 passed by Civil Judge (Junior Division), Bahadurgarh whereby application filed by the plaintiff-respondent under Order 6 Rule 17 of the Code of Civil Procedure (for short, "the Code") was allowed.

By filing a suit for declaration and correction of revenue entries, respondent-Raj Bala challenged the judgment and decree dated 11.06.1992 passed in Civil Suit No.464 of 1992 by Additional Senior Sub Judge, Bahadurgarh, in case titled 'Tara Chand vs. Raj Bala', in respect of

land measuring 5 Kanals 1 Marla which she alleged is owned and possessed by her but defendant-petitioner Tara Chand had obtained the judgment and decree by playing fraud. The case was contested by the petitioner. After the issues were framed and the case was fixed for plaintiff-Raj Bala's evidence, an application for amendment in Para Nos.3,4,5 and 11 was moved by Raj Bala. The application was allowed by Civil Judge (Junior Division), Bahadurgar, vide order dated 14.08.2015.

Aggrieved by the impugned order, the petitioner has preferred the instant revision petition.

The submissions made by Mr. Kulvir Narwal, learned counsel representing the petitioner have been considered.

The contention of learned counsel for the petitioner is that in the application for amendment filed by the respondent-plaintiff, she did not even remotely contend that despite exercise of due diligence the matter sought to be added by way of amendment could not be raised earlier. The condition of "due diligence" as prescribed in proviso to Order 6 Rule 17 C.P.C. is not satisfied. Learned counsel urges that since the issues had been framed and the trial had commenced, no new facts could be pleaded by the respondent-plaintiff by seeking amendment of pleadings. To support his argument, learned counsel relied upon **Ajendraprasadi N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** and **Chander Kanta Bansal vs. Rajinder Singh Anand, 2008(5) Supreme Court Cases 117.**

The facts in hand are on a different footing. No doubt, issues

had been framed on the rival contentions of the parties and the case had been adjourned for plaintiff-respondent's evidence but no evidence has been led so far. Moreover, the amendment sought is only of explanatory nature. By proposed amendment, the facts already pleaded in Para Nos.3,4 and 5 are only being further explained by the plaintiff-respondent. The intention is neither to change the nature of the suit nor to introduce any fact inconsistent to the pleadings already raised. Also nothing is being altered or changed by the proposed amendment.

There is an observation of learned trial court in the impugned order that the amendment is necessary for the purpose of determining the real question in controversy. The amendment was allowed finding that the case is still at the initial stage and the parties are yet to lead their evidence.

Thus, finding no illegality or perversity in the order of learned trial Court calling for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

03.09.2015.
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