

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

Civil Revision No.5912 of 2015

Date of decision: 29.10.2015

Santra

.....Petitioner

Versus

Khem Chand, since deceased, through LRs

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.R. Yadav, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 28.07.2015 (Annexure P-4) passed by the Civil Judge (Junior Division), Gurgaon, whereby application filed by the plaintiff-petitioner under Order 1 Rule 10 and Order 6 Rule 17 read with Section 151 CPC, has been dismissed.

Santra-plaintiff (petitioner herein) filed a suit for specific performance of agreement to sell dated 13.12.2005 executed by father-in-law of the petitioner in her favour in respect of house measuring 37.5 square yards for sale consideration of Rs.4 lacs. Except husband of the petitioner, all his four brothers had signed the agreement. Subsequently, father-in-law of the petitioner namely Khem Chand, vide award dated 30.10.2006 passed by Permanent Lok Adalat, Gurgaon, got half share of the above house transferred in favour of his son Birbal Saini. Later on, Birbal Saini got Vasika No.22588 dated 30.01.2007 registered with Sub Registrar, Gurgaon.

During the pendency of the suit, defendant-Khem Chand expired on

time of leading evidence, Birbal Saini filed his affidavit dated 18.02.2015 stating the above said facts. Thereafter, the petitioner made an application (Annexure P-1) for amendment of the plaint as well as impleading husband of the petitioner as one of the legal heirs of defendant. Copy of the amended plaint has been annexed as Annexure P-2. Defendant(s) filed reply dated 18.03.2015 (Annexure P-3) to the said application. Trial Court dismissed the application of the petitioner vide order dated 28.07.2015 (Annexure P-4).

For reference, Order 6 Rule 17 CPC is reproduced as under:-

“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.”

Proviso to the above Rule was added w.e.f. 01.07.2002, which makes it mandatory that an amendment can be allowed if, the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Present suit was filed in the year 2008. The impugned Award, vide which Khem Chand had transferred half of the house in favour of his son-Birbal was passed in the year 2006 by Permanent Lok Adalat, Gurgaon. The said Award was registered vide Vasika No. 22588 dated 30.01.2007. Hence, for all intents and purposes, on the date of filing of the suit, the above said facts were in the knowledge of the plaintiff-petitioner. The petitioner has failed to establish, as to how she could not bring the above facts before commencement of the trial i.e. framing of issues. Hence, the application of the petitioner has been rightly dismissed by the trial Court.

The judgment referred to by learned counsel for the petitioner in Baldev Singh Vs. Manjit Singh and others, 2015 (3) RCR (Civil) 97, is not applicable to the facts of the present case. As per this judgment, amendment can be allowed even if, the suit was at the final stage, if it does not change the nature of the suit. There was merely a typographical error in mentioning Khasra numbers and Jamabandi in the said case. In this background, the amendment of plaint was allowed. However, in the present case by way of amendment, the plaintiff-petitioner is seeking setting aside of the Award passed by the Permanent Lok Adalat in the year 2006, which was duly registered on 30.01.2007. Hence, the amendment sought to be made in the plaint by adding paragraph 4-A, would certainly change the entire nature of the suit. The Award was registered much prior to filing of the suit and the application for amendment of plaint was filed after framing of issues when evidence of the defendant(s) had already been recorded.

In the affidavit dated 18.02.2015 (Annexure P-9) given by Birbal Saini, it has been mentioned that a Panchayat was convened on 05.09.2006 and both the parties got resolved their dispute by way of a compromise. He had agreed to pay a total amount of Rs.1,14,400/- to Smt. Santra-petitioner. As per settlement, he had paid a sum of Rs.1,00,400/- to Smt. Santra in the presence of *Saini Sabha*. Thereafter, on 17.09.2006, he gave Rs.14,000/-, which were accepted by Smt. Santra-petitioner in the presence of Executive Committee of the Panchayat. Pursuant to the aforesaid settlement, a compromise decree was passed before the Permanent Lok Adalat, Gurgaon, on 30.10.2006 in favour of Balbir Saini, which was duly registered before the Sub Registrar, Gurgaon on 30.01.2007. Similar affidavit has been filed by Virender Singh, copy of which has been annexed as Annexure P-8.

A perusal of the affidavits (Annexures P-8 and P-9) given by the defendants-respondents and certified copy of the written statement filed by defendant-Khem Chand further clarifies that after the Award dated 30.10.2006 was registered, due notice was given to the plaintiff-petitioner on 03.04.2007. Thereafter, the present suit was filed. Hence, the application for amendment has been rightly dismissed by the trial Court.

As regards the second prayer in the application for impleading Hari Singh as legal heir of deceased defendant-Khem Chand is concerned, the trial Court has rightly rejected the same on the ground that after the death of Khem Chand, the plaintiff-petitioner had made an application for impleading his legal heir namely Hari Singh on 12.04.2012. Hari Singh is the husband of plaintiff-petitioner. Hence, the fact that Hari Singh was one of the legal heirs of Khem Chand, was well within the knowledge of plaintiff-petitioner at that time. However, the present application seeking to implead him as legal heir of deceased-defendant has been filed in the year 2015. Therefore, the same deserved to be dismissed.

In view of the above discussion, no ground is made out to interfere in the impugned order.

Dismissed.

29.10.2015
ajp

(RITU BAHRI)
JUDGE