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

CR No.6242 of 2014

Date of decision: March 12, 2015

Jasvir Singh

.....Petitioner

Versus

Joginder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.S. Virdi, Advocate
for the petitioner.

Mr. Dinesh Nagar, Advocate
for respondents No.1.

SABINA, J

Petitioner has filed this petition challenging the order dated 28.07.2014, whereby application moved by the respondent No.1 under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the plaint, was allowed.

Learned counsel for the petitioner has submitted that trial had already commenced and the plaintiff could not be permitted to amend the plaint. Infact, amendment was sought after both the parties had led their evidence. Learned counsel has further submitted that the amendment now sought by the plaintiff was already in his knowledge and the application moved by the plaintiff was liable to be dismissed.

The relief now claimed by the plaintiff by way of amendment

was time barred.

Learned counsel for the petitioner has placed reliance on ***Mansa Devi versus Ram Kishan***, 2003(4) R.C.R. (Civil) 822, wherein it was held as under:-

“5. If the view of the Civil Judge is examined in the light of the provisions of Order 6 Rule 17 of the Code it becomes patent that no amendment is permissible if the facts sought to be incorporated in the pleadings by amendment were already in the knowledge of the plaintiff-petitioner at the time of filing of the suit. It is, thus, evident that the plaintiff-petitioner was not in possession and this fact was within his knowledge and he ought to have pleaded. There is no explanation furnished for omission to plead that fact. Therefore, the revision petition is without any merit and is thus liable to be dismissed.”

Learned counsel for the respondent No.1, on the other hand has opposed the petition and has submitted that respondent No.1 had concluded his evidence on 18.09.2014. Learned counsel has further submitted that relief now sought by the plaintiff by way of amendment was necessary to be claimed by the plaintiff and the trial Court had rightly allowed the application moved by the plaintiff under Order 6 Rule 17 CPC.

Impugned order reads as under:-

“*Heard* on the application under Order 6 Rule 17 C.P.C. It has been argued by the ld. Counsel for the plaintiff/applicant that the applicant wants to

claim additional relief for compensation amount for deprived part of the land from the defendants which may found determined by the Court. That the above said amendment is necessary and is required for the complete and effective decision and this amendment will not change the nature or cause of action of the present case. On the other hand reply has been filed by the defendants/respondents who have prayed for dismissal of the application.

Heard. Vide this application the applicant/plaintiff wants to intend his plaint by incorporating additional relief in the head note and in the prayer clause of the plaint. No doubt the applicant/plaintiff was aware of these facts at the earlier stage but it is also a well settled law that the interest of justice has to be seen and therefore, in order to avoid unnecessary multiplicity of suit and to properly adjudicate the matter in controversy between the parties the application deserves to be allowed. Hence, the application in hand is hereby allowed. Let amended plaint be filed on the next date.”

Order 6 Rule 17 CPC reads as under:

“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.”

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

In the present case, respondent No.1 has filed suit for declaration to the effect that he was owner in possession of the land in question or in the alternative, it was prayed that joint possession of the land in question be decreed in his favour. On the pleadings of the parties, issues were ordered to be framed by the trial Court and thereafter, parties led their evidence. At this stage, respondent No.1 moved an application for permission to amend the plaint. By way of amendment, plaintiff wanted to claim the relief of compensation amount for the deprived part of the land at the market value from the defendants. The relief sought by the plaintiff by way of amendment, was in the knowledge of the plaintiff at the time of filing of the suit. However, the said relief was not claimed by the plaintiff at the time of filing of the suit.

In these circumstances, as per Order 6 Rule 17

CPC, the amendment sought by the plaintiff was liable to be rejected.

Accordingly, this petition is allowed. The impugned order dated 28.07.2014 is set aside.

**(SABINA)
JUDGE**

March 12, 2015

m.singh