

114

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

CR No.674 of 2015

Date of decision: March 03, 2015

Surinder Singh

.....Petitioner

Versus

Shakuntla Kumari

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Lalit Pathakharma, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 17.09.2014, whereby application moved by the petitioner to amend the written statement, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record available on the file carefully.

Respondent has filed suit for permanent injunction restraining the petitioner from encroaching the public street by raising construction etc. Petitioner filed his written statement. Issues were framed by the trial Court on 13.06.2012 and thereafter, plaintiff appeared in the witness box as her witness on 23.04.2013. Thereafter, petitioner filed the application under Order 6 Rule 17 Civil Procedure Code, 1908 ('CPC' for short) for permission to amend the written statement.

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.”

Petitioner has already taken the plea that no street was in existence as alleged by the plaintiff. During the pendency of the trial, petitioner sought demarcation of the land and the *Kanungo* gave its report on 20.08.2013. Petitioner wants to amend the written statement on the basis of the demarcation report dated 20.08.2013. Petitioner also now wants to take up the plea that Shammi Malhotra was not the attorney of Om Prakash. It is further sought to be pleaded that Om Parkash was not the owner in possession of the plot, which was allegedly sold to the plaintiff vide sale deed dated 24.10.1988. So far as the plea now sought to be taken that Om Parkash was not the owner of the land in question is concerned, the same was available to the petitioner at the time of filing of the written statement, but for the reasons best known to the petitioner, the said plea was

not taken by him. Hence, amendment in this regard, could not be allowed to be made in the written statement by the petitioner. Petitioner also cannot be allowed to amend the written statement on the basis of demarcation report obtained by the petitioner. The said demarcation report was got by the petitioner during the pendency of the suit. Hence, the petitioner could not be allowed to plead the same by way of amendment of the written statement.

In the facts and circumstances of the present case, learned trial Court had rightly dismissed the application moved by the petitioner seeking amendment of the written statement. No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

March 03, 2015

m.singh