

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

**Civil Revision No.3928 of 2014
Date of Decision: 27.09.2016**

Sucha Singh

.....Petitioner

Vs

Harbans Singh @ Harbang Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S. Khiva, Advocate
for the petitioner.

Mr. L.S. Sidhu, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. In this revision petition, petitioner has challenged the order dated 11.11.2013 passed by Civil Judge (Sr. Divn.) Sardulgarh, District Mansa (Annexure P-5) whereby the application filed by the defendant/petitioner under Order 6 Rule 17 CPC for amendment of written statement was declined.

[2]. Respondent/plaintiff Harbans Singh @ Harbang Singh filed a suit for permanent injunction seeking to restrain the defendants from taking possession of the land in question and from interfering therein and also from changing the nature of the agricultural land by making construction over the part of the land

measuring 6 *Kanals* 13 *Marlas*. Plaintiff alleged that he is a *Gair Marusi* tenant over the land measuring 6 *Kanals* 13 *Marlas* and has sown the crop. He also claimed that the revenue record is in his favour showing him to be a *Gair Marusi* in cultivating possession. The possession of the defendants was denied.

[3]. In the written statement filed by the defendants i.e. petitioner being defendant No.3, it was asserted that the plaintiff has no right, title or interest in the suit property as against true owners i.e. the defendants. One Hukam singh @ Hakam Singh was the owner of the suit land along with other land, total measuring 14 *Kanals* 4 *Marlas*. He enjoyed the benefit of land during his life time. Hukam Singh @ Hakam Singh died and the defendants were his legitimate legal heirs and the land was mutated vide mutation of inheritance No.1584 in their favour and the defendants were in possession thereof along with other land being share-holders in exclusive possession. The *khasra girdwaris* were wrongly recorded in the name of the plaintiff. An application for correction of *khasra girdwari* was filed. It was alleged by the defendants that plaintiff wanted to take forcible possession of the land in question in an illegal manner for which he has no right in law.

[4]. In the application under Order 6 Rule 17 CPC,

defendant No.3/petitioner claimed that defendants were the true owners in possession of the suit land measuring 6 *Kanals* 13 *Marlas*. The defendants wanted to amend the written statement on the premise that out of suit land, towards the South-Eastern corner in an area measuring 11 *Marlas*, the defendants constructed a residential house consisting of four room, one cattle room kitchen and bathroom. Previously, the said house was being used by the defendants. Now from some time the said house was handed over to Gurmit Singh, who is looking after it. Gurmit Singh is residing in the said house and is taking care of the remaining land of the defendants. The proposed amendment was claimed to be essential for proper adjudication of the case as the same would not change the nature of the suit. The proposed amendment was to the following effect:-

“a) That it shall be mentioned after the word “has been coming” in the second line at page number 2 of the written statement.

On the suit land measuring 6 Kanal 13 Marlas, towards the Sourth Eastern corner in an area measuring 11 Marlas, the defendants constructed a residential house consisting of four rooms, one cattle room, kitchen and bathroom. Previously the said house was being used by the defendants and now from some time the said house is handed over to Gurmit Singh son of

Lakhan Singh, the same is looked after by him and the said Gurmit Singh is residing there and in lieu thereof he is guarding the remaining land of the defendants.”

[5]. The proposed amendment was contested by plaintiff/respondent No.1 on all counts.

[6]. Trial Court dismissed the application for amendment on the ground that the issues were framed on 16.07.2012. Plaintiff has already closed his evidence. The application has been filed by the defendants after availing two opportunities for leading evidence. The factum of house being in existence on the South-Eastern portion of the suit land was in the knowledge of the defendants from the very inception. Therefore, the ingredients of knowledge and due diligence were held to be against the defendants.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The Court should not record any finding on merits of the amendment. The merits of the

amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

[9]. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[10]. In **Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830**, the Hon'ble Apex Court summed up the criteria for allowing or disallowing the amendment of written statement. Para Nos.20 and 23 of the aforesaid judgment are being reproduced hereasunder:-

“20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the

principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

23. *Keeping these principles in mind, namely, that in a case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”*

[11]. Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may be necessary for real determination of issues between the parties. Amendment can be allowed, even after commencement of the trial, if in the opinion of the Court that amendment could not be brought on despite knowledge and due diligence by the party and the party could not have raised the matter before commencement of the trial. The amendment in the written statement has to be liberally construed unless and until serious

prejudice or irreparable loss is caused to the opposite side or the amendment is *mala fide*.

[12]. Since the evidence of the defendants is in progress, the amendment in question would completely enable the trial Court to decide the controversy completely viz.-a-viz. the plea of rival parties with regard to exclusive possession of Gurmit Singh as claimed by the defendant No.3/petitioner would also be considered as to whether he was looking after the land in the capacity of caretaker on behalf of the defendants on the spot or plaintiff was in actual possession of the suit land. Even if, the ingredients of knowledge and due diligence are treated to be feeble in the present case, the Court would require the amendment to be made in order to decide the controversy in a just and proper manner.

[13]. In view of aforesaid, this revision petition is allowed. Impugned order dated 11.11.2013 passed by Additional Civil Judge (Sr. Divn.) Sardulgarh is set aside. Normal consequences in pursuance thereof to follow.

September 27, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether reportable

Yes / No