

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

C.R No. 4637 of 2015(O&M)

Date of decision:11.04.2016

Amar Singh

..... petitioner

Versus

Nirmal Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.S.Salar, Advocate
for the petitioner.

Mr. R.S.Dhaliwal, Advocate
for the respondents.

1. **Whether Reporters of Local papers may be allowed to see the judgment? Yes.**
2. **To be referred to the Reporters or not? Yes.**
3. **Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 07.07.2015, passed by learned Additional Civil Judge (Sr. Division), Sunam, vide which the application filed by the petitioner-defendant for amendment of written statement has been dismissed.

2. Learned counsel for the petitioner contended that the minor amendments were sought in the written statement.

A legal plea with respect to the jurisdiction of the Civil Court

was to be raised as the matter relates to the consolidation. He further contended that the khasra number was also wrongly mentioned as 177/22/2 instead of 177/22. He pleaded that the law regarding amendment of the written statement is very liberal. The aforesaid amendment was necessary for determination of the real controversy in the suit. So, the learned trial Court has wrongly dismissed the application.

3. On the other hand, learned counsel for the respondents contended that the trial has already commenced. Plaintiffs have also led their evidence. So, the application for amendment of written statement has been filed after the commencement of the trial at belated stage. Thus, he contended that the learned trial Court has rightly dismissed the application.

4. I have duly considered the aforesaid contentions.

5. The petitioner-defendant had filed the application for permission to amend the written statement. Petitioner wants to raise legal plea that the Civil Court has no jurisdiction to try and decide the suit. Secondly, that previously the Killa number of the suit land was 177//22 and during consolidation it became Killa No.178//22/2 and the suit land was allotted to the petitioner-defendant by the Additional Director Consolidation, Punjab, Chandigarh vide order dated 29.07.1982.

6. The Hon'ble Supreme Court in case **Usha**

Balashaheb Swami & others V. Kiran Appaso Swami & Others, 2007(2) RCR (Civil) 830 has laid down as under:-

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as a question of prejudice would be far less in the former than in the latter case.....”

7. In case of amendment of the written statement, the approach should be liberal. No doubt, as per the proviso to Order 6 Rule 17 Code of Civil Procedure, 1908 (for short C.P.C), the amendment in the pleadings after the commencement of the trial shall not be allowed 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 the trial. But, at the same time, the Hon'ble Supreme Court in case **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. L.Rs and others 2015(5) R.C.R (Civil) 562**, has been laid down that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. In case **Surender Kumar Sharma Vs. Makhan Singh 2009(4) R.C.R (Civil) 597**, the three Judges Bench of the Hon'ble Apex Court has laid down that the belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, the amendment is necessary, it can be allowed on payment of costs. Again in

case **Abdul Rehman and another Vs. Mohd. Ruldu and others 2012(4) R.C.R(Civil) 481**, the Hon'ble Apex Court has laid down that power to allow amendment is wide and can be exercised at any stage of proceedings in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation. All the amendments which are necessary for the purpose of determining the real controversy between the parties should be allowed, if it does not change the basic nature of the suit.

8. In view of the aforesaid ratio of law, mere this fact that the application for amendment of the written statement has been moved by the petitioner at the belated stage i.e. after closing of the plaintiffs' evidence, is itself no ground to decline the same. The petitioner has sought to add a preliminary objection regarding the jurisdiction of the Civil Court to entertain the suit, which is a legal plea and can be raised at any stage of the proceedings. The second amendment sought by the petitioner is to insert the khasra number of the land allegedly allotted to him by the Consolidation Authorities. It is alleged that earlier Killa number of the suit land was 177//22 and during consolidation it was changed to Killa 178//22/2. So, only the description of the land is to be mentioned. Both these amendments will not at all change the nature of the case and are necessary for determination of the real question in controversy as the respondents-plaintiffs have filed the suit

for possession under Section 6 of the Specific Relief Act whereas petitioner/defendant has taken the plea that the suit land was allotted to him by the Consolidation Authorities in the year 1980. Thus, in the interest of justice and in order to determine the real question of controversy between the parties, the application filed by the petitioner for amendment of written statement deserves to be allowed.

9. Thus, keeping in view the aforesaid discussion, the present revision petition is allowed. The impugned order dated 07.07.2015 is set aside. Consequently, the application filed by the petitioner-defendant for amendment of the written statement stands allowed subject to Rs. 5000/- as costs.

11.04.2016

S.khan

(DARSHAN SINGH)
JUDGE