

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5796 of 2015

Date of Decision: 08.01.2016

Jaswant Singh

... Petitioner(s)

Versus

Sukhdev Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Manish Kumar Singla, Advocate
for the petitioner.

Shekher Dhawan, J.

Mr. Sukhdev Singh, Advocate has put in appearance on behalf of the respondent. Power of attorney filed by learned counsel for the respondent is taken on record.

Present revision petition under Article 227 of the Constitution of India is challenge to the order dated 30.1.2015 passed by Civil Judge (Junior Division), Dhuri, whereby application for amendment under Order 6 Rule 17 read with Section 151 CPC, so as to amend the plaint, was dismissed.

Learned counsel for the petitioner submitted that the house in question was given to the defendant for his residential purpose being

fast friend of the plaintiff and the same was taken over by the defendant with the assurance that the same would be vacated as and when required by the petitioner. Lateron, the defendant refused to vacate the house and as such necessity of the suit. The defendant contested the suit claiming himself to be the owner of the property in question. Issues were framed on 13.8.2012 and during the proceedings of trial of the case, when the same was fixed for evidence of the plaintiff, the petitioner could lay his hands on "Sanad" dated 21.1.1956 and 31.12.1956 issued in the name of father of the petitioner by the Rehabilitation Department as he had migrated from Pakistan and the house was allotted to the father of the petitioner. On the basis of that, application for amendment of the plaint has been filed so as to incorporate these facts and the said application was dismissed by the Court below.

Learned counsel for the petitioner submitted that amendment is essential for the just decision of the case. Petitioner is not going to make out a new case on the basis of proposed amendment. Earlier, the said document was not in possession of the applicant/petitioner and as such he could not produce the same on the court file earlier. Moreso, the nature of document is such that "Sanad" is part of official record and cannot be said to be forged or fabricated document. But the Court below has erroneously appreciated these facts and dismissed the application. So the present petition be accepted and the order under challenge be also set aside.

Learned counsel for the respondent submitted that as per

amended provisions of Order 6 Rule 17 CPC, amendment could be allowed till the commencement of the trial of the case. As in this case, the trial had already commenced and there was no justification for allowing the proposed amendment and the Court below rightly declined the prayer for amendment of the plaint. The petition is without merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the petitioner has sought to amend the plaint so as to incorporate the fact which was not in the knowledge of the petitioner at the time of filing of the suit. Even amended provisions of law as incorporated under Order 6 Rule 17 CPC nowhere puts a complete bar to deny amendment of the plaint. It is not disputed that generally amendment should not be allowed after commencement of the trial. But in the proviso, it has been specifically mentioned that amendment can be allowed by the Court at any stage if the Court considers that the proposed amendment is essential for the just decision of the case.

Taking the case from that angle, petitioner has filed the civil suit for declaration on the basis that he is owner of the property. The proposed amendment is to establish the fact that he is owner of the property and for that purpose he wants to produce copy of "Sanad". The nature of document is such that the said document is part of official record and cannot be said to be forged or fabricated document. Moreso, the other party shall have a right to rebut the case of the petitioner and even to rebut the evidence yet to be adduced by the petitioner. Law on

the point is settled that the rules of procedure are meant for advancement of justice and not to create obstacles for advancement of justice. It is not the intention of the legislature that amendment cannot and should not be allowed in all the cases where trial has commenced. That is why the discretion has been left to the court to allow the proposed amendment if that is essential for the just decision of the case. In the given circumstances, the proposed amendment was most essential for just decision of the case and so as to give finality to the litigation. However, the Court below declined the said prayer by rejecting the application under Order 6 Rule 17 CPC which should have otherwise been accepted by the Court below.

In view of the above, present revision petition is allowed and the impugned order dated 30.1.2015, passed by Civil Judge (Junior Division), Dhuri is set aside. The proposed amendment stands allowed.

(Shekher Dhawan)
Judge

January 8, 2016

"DK"