

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 6511 of 2015(O&M)
Date of decision :09.12.2016

Ramgiri

.....Petitioner

Versus

Shiv Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.P.R.Yadav, Advocate
for the petitioner.

Mr. R.D.Yadav, Advocate
for respondents no.1 and 2.

Respondents no.3 to 8 ex parte.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 16.09.2015, passed by the learned Civil Judge (Jr. Division), Mahindergarh, vide which the application moved by the petitioner-plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of the plaint has been dismissed.

2. I have heard Mr. P.R.Yadav, Advocate, learned counsel for the petitioner, Mr. R.D.Yadav, learned counsel for respondents no.1 and 2 and meticulously gone through the paper book.

3. Initiating the arguments, learned counsel for the petitioner contended that the only amendment sought by the petitioner was to correct

the killa number, which was inadvertently mentioned wrong in the original plaint. He contended that there is no change of the suit property as the plaintiff has also attached the site plan along with the plaint giving the description of the suit property. Thus, he contended that the said amendment will not cause any prejudice to the rights of the defendants. He further contended that in case, the application for amendment of the plaint is allowed, the petitioner-plaintiff will not lead any further evidence.

4. On the other hand, learned counsel for respondents no.1 and 2 contended that the plaintiff has already led the evidence. Even, the defendants have led their evidence. The application for amendment of the plaint has been moved when the trial has reached at its fag end. No explanation has been given as to why killa no.15/1/2 could not be mentioned in the original plaint. Thus, he contended that the application moved by the petitioner-plaintiff was rightly dismissed by the learned trial Court.

5. I have duly considered the aforesaid contentions.

6. The plaintiffs have filed the suit for declaration that they are owner in possession of the residential land comprised of Rect. no.10, Killa no.15/1, measuring 2 kanals 9 marlas shown with letters 'BGHJ' in red colour in the site plan attached with the plaint situated on the Kanina Mahendergarh road to the extent of 3.5 marlas comprised of Rect. no.10, killa no. 15//1/4 and are entitled to get their name recorded as owner in the revenue record. They have also challenged the order dated 28.02.2006 passed by the Assistant Collector Ist Grade, Mohendergarh.

7. The plaintiffs have moved the application for amendment of the plaint pleading therein that in the heading and prayer clause of the plaint,

Rect. No. 10, killa no.15/1 /4 has been written inadvertently, whereas it ought to have been mentioned as Rect. No. 10, Killa no.15/1/2, which was received by defendants no.1 and 2 in the partition. The above facts came to the notice of the plaintiffs at the time of arguments.

8. Thus, by way of the amendment, the plaintiff-petitioner only wants to correct the killa number. In the original plaint, the killa number is mentioned as Rect. No.10, Killa no.15/1/4, now it is to be mentioned as Rect. No.10, Killa No.15/1/2. The plaintiffs have also attached the site plan with the plaint to identify the portion in dispute. It is mentioned that the disputed portion is shown with letters BGHJ in red colour in the site plan. So, it could not be stated that by way of this amendment, the plaintiff-petitioner wants to change the subject matter of the suit land, only the correct killa number is to be mentioned. So, there can be no prejudice to the rights of the defendants.

9. Learned counsel for the petitioner has undertaken that in case the amendment is allowed, the plaintiffs will not lead any fresh evidence. So, there is no possibility of any delay in the proceedings.

10. The Hon'ble Supreme Court in case **Peethani Suryanarayana &Anr. Vs. Repaka Venkata Ramana Kishore & Ors. 20092) R.C.R. (Civil) 521** has laid down that the amendment to correct the wrong description of the property made in the plaint due to error can be allowed even after passing of the final decree if no prejudice is caused to the parties. The case in hand is even on better footing as the present suit is still pending at the stage of trial. This Court in case **Karam Singh & others Vs. Faquir Chand & others 2015(5) R.C.R.(Civil) 2** has laid down that the amendment of the pleadings due to technical mistake cannot be declined

merely on the ground of delay and it could be compensated by way of costs.

Again in case **Surinder Singh Vs. Nirmal Singh and others 2014(4) PLR 836** it has been laid down that the amendment of the pleadings is permissible at any stage including the stage of arguments and even at the appellate stage if such amendment is necessary to determine the real questions in controversy between the parties. Thus, keeping in view the aforesaid consistent ratio of law, the application moved by the petitioner for amendment of the plaint for correction of the killa number, which will not cause any prejudice to the defendants nor will change the nature of the suit, deserves to be allowed and the learned trial Court has wrongly dismissed the same. However, for causing the delay in moving the application and inconvenience to the defendants, they are certainly entitled for costs.

11. Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 16.09.2015 is hereby set aside. The application moved by the petitioner for amendment of the plaint is hereby allowed subject to ₹ 10,000/- as costs.

09.12.2016

S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No