

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

CR No. 6595 of 2015(O&M)

Date of decision: 17.12.2016

Surinder Kumar Gupta and anotherPetitioners

VERSUS

Jaswant Kaur (since deceased) through LRs and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.C. Shahpuri, Advocate for the petitioners.

Mr. Raja Sharma, Advocate for respondent No.2.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India the present petition directs challenge against order dated 22.09.2015 (Annexure P-7) passed by the Civil Judge (Junior Division), Yamuna Nagar whereby application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of plaint has been dismissed.

Counsel for the petitioners has submitted that the petitioners/plaintiffs have filed a suit for possession by way of removal of construction of the portion 'BCD' of the plots marked by letters 'ABCDE', depicted in the rough site plan attached with the plaint. Before any evidence could be adduced by the petitioners, the instant application was filed in order to give measurements and boundaries of encroached portion and to correct that on the eastern side of plots, property of Balwant Singh has been wrongly mentioned instead of there being property of the

plaintiffs on the eastern side. It is further submitted that by way of the proposed amendment, the petitioners sought to amend head-note of the plaint as well as consequential amendments detailed in para 5 of the application (Annexure P-3) and in case the proposed amendment is not allowed to be made, it would cause serious prejudice to the petitioners in seeking complete and effective adjudication of the matter in controversy when the other side can well be compensated with costs for delay, if any, attributable to the petitioners.

Another submission made by counsel is that allowing application of the petitioners would neither change the cause of action nor nature of the suit. The law regarding amendment of pleadings is quite liberal and amendment can be allowed at any stage including the appellate stage of the proceedings. In support of his contentions, he has referred to judgments of this Court **Baljeet Vs. Ajit Singh and others, 2014(1) RCR (Civil) 871** and **Didar Singh vs. Sinder Kaur and others, 2008(2) RCR (Civil) 64**.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that the present suit was filed by the petitioners in the year 2010 and the same was dismissed for non-prosecution in the year 2013 and was restored in the year 2014. On completion of pleadings, issues were framed and after availing three opportunities for adducing evidence, the present application was filed seeking amendment of the plaint. It has been vehemently argued that keeping in view the casual and lackadaisical conduct of the petitioners, they have disintitiled themselves to seek indulgence of this Court by way

of intervention in the discretionary jurisdiction exercised by the trial Court rejecting application for amendment of the plaint.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

Indisputably, the petitioners filed the suit for possession with the averments that Jaswant Kaur (since deceased) now represented by her legal representatives and Balwant Singh have illegally raised construction over the property owned by the petitioners. By way of the proposed amendment, the petitioners want to give the measurements and boundaries of encroached portion as well as to describe the correct boundary on the eastern side. In case the proposed amendment is not allowed, the same may prove to be disastrous at the time of final disposal of the suit and it may be difficult to establish exact identity of the property required for complete and effective adjudication of the matter in controversy as well as to execute the decree, if any, eventually passed in favour of the petitioners.

Counsel for the respondents has contested claim of the petitioners primarily on the ground that the application for amendment has been filed at a belated stage after the petitioners have already availed three dates for adducing evidence. As per the settled position in law, delay itself cannot be a ground to decline the prayer for amendment as costs is a panacea for delay.

Hon'ble the Supreme Court in **Rajesh Kumar Aggarwal and others vs. K.K. Modi and others**, 2006(2) RCR (Civil) 577, has held that 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. Further held that Court should not go into the correctness or falsity of the case in the amendment nor it should record a finding on merits of the amendment as merits of the amendment are not to be adjudged at the stage of allowing the prayer for amendment. Rule of amendment essentially is a rule of justice, equity and good conscious and the power of amendment should be exercised in the larger interest of doing justice to the party before the Court.

In **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others**, 2010(1) RCR (Civil) 27 after noticing proviso appended to Rule 17 of Order 6 CPC, Supreme Court has culled out certain important aspects to be considered while dealing with an application for amendment of pleadings. The Court has laid down that amendment cannot be allowed, if it causes such a prejudice to the other side for which he cannot be compensated with costs. The relevant extract from para 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - (2) Whether the application for amendment is *bona fide* or *mala fide*?
 - (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
- And

- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

Still later in **Abdul Rehman and another vs. Mohd. Ruldu and others**, 2012(4) RCR (Civil) 481, it has been held that power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation. All amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if it does not change the basic nature of the suit. Further, held that change in the nature of relief claimed shall not be considered as change in the nature of the suit.

When the facts and circumstances of the present case are examined in the light of enunciation of law laid down in the aforesaid authorities of Hon’ble the Supreme Court of India and the discussion made hereinbefore, I have no hesitation to hold that the order impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed; the impugned order is set aside and the application filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC for amendment of plaint is allowed subject, however, to payment of costs of Rs.10,000/- to compensate the respondents for delay. The trial Court shall put its best efforts to dispose of the suit expeditiously as it is pending since 2010. To

achieve this purpose, the Court will ensure that neither of the parties is allowed unnecessary adjournment.

However, nothing stated in this order shall be construed as an expression of opinion on the merits of the facts added by way of amendment or otherwise.

DECEMBER 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no