

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

**CR No.7642 of 2016
Decided on: 15.11.2016**

Paramjit Singh and another

....Petitioners

Versus

Harbans Singh (since deceased) through his LRs and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. M.S. Khaira, Sr. Advocate
with Mr. D.S. Randhawa, Advocate
for the petitioners.

REKHA MITTAL, J.

By invoking Article 227 of the Constitution of India, the present petition lays challenge against order dated 13.09.2016 (Annexure P4) whereby application for amendment of the plaint has been allowed.

Harbans Singh (since deceased) now represented by Ranjit Singh and Harjit Kaur – respondent No.1 filed a suit for declaration that he is owner in possession of land mentioned in headnote of the plaint being son of Harcharan Singh erstwhile owner of the suit land and fictitious, fabricated proceedings *qua* change of ownership of land of Harcharan Singh in the names of contesting defendants at the back of and without notice to LRs of Harcharan Singh are illegal and does not affect rights of the plaintiff. The suit was filed in February, 2015 and Harbans Singh died during pendency of the proceedings.

The application for amendment of the plaint was filed by

the legal representatives of deceased – Harbans Singh in order to make amendments detailed in sub-paras (a) to (f) of para 2 of the plaint. After filing of response by the contesting defendants and having heard counsel for the parties, the learned trial Court allowed the application by assigning reasons recorded in para 4 of the impugned order. It has been noticed by the trial Court that the main objection of the defendant is that after the trial has commenced application for amendment cannot be allowed unless the applicant can show that the additional facts came to his knowledge after commencement of trial. It has been held that the case has not reached the stage of trial as issues have not been framed so the proviso appended to Rule 17 of Order 6 CPC does not apply to the present case. The Court has further relied upon judgment of Hon'ble the Supreme Court “***Abdul Rehman vs Mohd. Ruldu***”, 2012(4) RCR (Civil) 481, wherein it has been held that all the amendments which are necessary for determining the real question in controversy should be allowed, if it does not change the basic nature of the suit.

Counsel for the petitioners has neither challenge the factual findings recorded by the trial Court that the suit is still at its initial stage and issues are yet to be framed nor has advanced any arguments with regard to the ratio laid down in ***Abdul Rehman's case (supra)***.

The sole submission made by counsel for the petitioners is that in sub-para (b) of para 2, it has been averred that Harbans Singh (since deceased) during his service had been depositing his income with his father every month. It is argued that Harbans Singh did not raise any such plea that he had been sending money to his father, therefore, the

son and widow of Harbans Singh could not have any special means to allege such a fact by way of amendment.

I have heard counsel for the petitioner, perused the paperbook and the order impugned.

Hon'ble the Supreme Court of India has consistently held that amendment of pleadings can be allowed at any stage of the proceedings unless it cause such a serious prejudice to the other side for which he cannot be compensated with costs. Equally settled is that at the stage of deciding an application for amendment of pleadings, the Court would not enter upon the question of merits of the facts sought to be added by way of amendment. The petitioner would be entitled to raise an issue during trial that as Sh. Harbans Singh predecessor-in-interest of the applicants did not raise such an issue, plea with regard to Harbans Singh sending money to his father now raised is not meritorious and the same shall be appreciated by the Court at an appropriate stage of the proceedings. In this view of the matter, submission made by counsel for the petitioners does not constitute a valid ground to interfere in the discretion exercised by the trial Court.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

15.11.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No