

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

**CR No. 7931 of 2015(O&M)
Date of decision :27.04.2016**

Surjit Singh and others

..... Petitioners

Versus

Amrik Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Amit Kumar Saini, Advocate
for the petitioners.

Mr. Parminder Singh Gill, Advocate
for respondents no.1 to 3, 6 to 10.

- 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 15.09.2015 passed by the learned Additional Civil Judge (Senior Division), Samrala, whereby the application filed by the petitioners-plaintiffs under Order 6 Rule 17 Code of Civil Procedure, 1908 (for short C.P.C.) for amendment of the plaint has been dismissed.

2. Learned counsel for the petitioner contended that due to inadvertent mistake, the *kill*a number and rectangle number of the suit land have not been mentioned in the

plaint, which is necessary for the just decision of the suit. He contended that this amendment mentioning the *killa/rectangle* number of the suit property will not alter the nature of the suit. The power to allow the amendment of the pleadings is wide and can be exercised at any stage of the suit. Thus, he contended that learned trial Court has wrongly dismissed the application. He has further contended that there is no question of delay in disposal of the suit as in case the amendment is allowed, the petitioners-plaintiffs will not lead any fresh evidence. To support his contentions, he relied upon cases **Peethani Suryanarayana & Anr. Vs. Repaka Venkata Ramana Kishore & Ors. 2009(2) R.C.R (Civil) 521, Satguru Sri Jagjit Singh Ji Vs. Gurjeet Singh alias Harcharan Singhand others 2006(2) R.C.R (Civil) 71, Baldev Singh Vs. Manjit Singh and others 2015 (3) R.C.R (Civil) 97, Karam Singh & others Vs. Faquir Chand & Others 2012(5) R.C.R (Civil) 2, Balwant Singh Vs. Bachan Singh and others 2003(3) CTC 179 and Abdul Rehman and Anr. Vs. Mohd. Ruldu and Ors. 2012(4) R.C.R (Civil) 481.**

3. On the other hand, learned counsel for the respondents contended that the application has been moved by the petitioners-plaintiffs at the belated stage. The trial has already started. No reason has been mentioned in the application as to why this plea could not be raised in the original plaint. He contended that in view of proviso to Order 6

Rule 17 CPC, the amendment of the plaint cannot be allowed after the commencement of the trial. To support his contentions, he relied upon case **Vidyabai & Ors. Vs. Padmalatha & Anr. 2009(1) R.C.R (Civil) 763**. Thus, he contended that there is no illegality in the impugned order.

4. I have duly considered the aforesaid contentions.

5. Annexure P-7 is the copy of the application moved by the petitioners for amendment of the plaint. The suit has been filed by the plaintiffs for mandatory injunction directing defendants no.1 to 3 to reconstruct the watercourse after demolishing the room and for grant of the permanent injunction. It is further pleaded that the said watercourse is to be reconstructed in *killa* no. 1/1 of *rectangle* no.10. Due to inadvertent or typographical mistake above said *killa* number and rectangle number could not be incorporated in the plaint. Though, the factum regarding partition of the land due to which this *killa* number was created is very much pleaded. So, the amendment sought by the petitioners is only explanatory in nature. The petitioners only want to mention the *killa/rectangle* number of the property in dispute, where they are claiming the reconstruction of the watercourse. The incorporation of said *killa* numbers will not change the nature of the suit. Rather, the said amendment is essential for the just decision of the case. The Hon'ble Supreme Court in **Abdul Rehman's case (Supra)** has laid down that power to allow the

amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It was further laid down that all the 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. In **Peethani Suryanarayana's case (Supra)**, the wrong survey number was given in the plaint. The Hon'ble Apex Court laid down that the amendment in the pleadings can be allowed even after passing of the final decree if no prejudice is caused to the parties. That was a suit for partition and wrong discretion of the property was made in the plaint due to error. Even, the final decree was passed by the Court. The amendment in the plaint was allowed as no prejudice was caused to the parties as the suit land was the same. Only wrong survey number was mentioned in the plaint. The case in hand is even at better footing as application for amendment of the plaint has been filed during the pendency of the suit itself. In **Satguru Sri Jagjit Singh Ji's case (Supra)**, the amendment in the plaint was sought after 20 years. The plaintiffs had failed to mention the khasra numbers. The amendment was allowed by this Court. It was held that mere delay in seeking amendment cannot be a ground to decline the same. It was further laid down that omission to mention khasra number is not such by which the plaintiff was to gain anything. Similar ratio of law has been

laid down in **Baldev Singh's case (Supra)**, **Karam Singh's (Supra)** and **Balwant Singh's case (Supra)**.

6. No doubt, in the instant case, the application for amendment of the plaint has been moved after the commencement of the trial. The proviso to Order 6 Rule 17 CPC provides that no application for amendment shall be allowed if the trial has commenced, unless the Court comes to the conclusion that in-spite of “due diligence,” the party could not have raise the matter before the commencement of the trial. It is settled principle of law that procedural law is handmaid of justice. The Hon'ble Supreme Court in case **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Ors. 2005(4) R.C.R (Civil) 823** has laid down that all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not be construed in a manner which would leave the Court helpless to meet extraordinary situations in ends of justice, processor law, is not to be a tyrant but a servant, not an obstruction but an aid to justice. It was further laid down that a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. The similar ratio of law has been laid down by the Hon'ble Apex Court in case **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others 2015(5) R.C.R (Civil) 562**. Thus, the proviso to Order 6 Rule 17 CPC cannot

be construed in the manner that amendment of pleadings cannot be allowed in any case after the commencement of the trial.

7. There is also no question of delay in disposal of the suit as learned counsel for the petitioner has stated that in case the amendment is allowed, the plaintiff will not lead any fresh evidence. As already mentioned, the amendment sought by the petitioners is in consonance with the original pleadings and will not change the nature of the suit. Thus, it will not cause any prejudice to the rights of the respondents. Rather, the said amendment is essential to determine the real question in controversy in the present suit.

8. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 15.09.2015 is hereby set aside and the application filed by the petitioners for amendment of the plaint stands allowed subject to Rs. 5,000/- as costs.

27.04.2016

S.khan

**(DARSHAN SINGH)
JUDGE**