

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 8017 of 2016(O&M)

Date of decision :30.11.2016

Gian Kaur @ Giano @ Jaswant Kaur

.....Petitioner

Versus

Manjit Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.T.P.S.Bhatti, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been moved against the order dated 25.10.2016 passed by the learned Civil Judge (Jr. Division), Phillaur, vide which the application moved by the plaintiff-petitioner for amendment of the plaint, has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner only wants to amend the plaint to mention the new khasra numbers as the khasra numbers were not mentioned in the sale deed on the basis of which the suit was filed. He contended that the amendment sought by the petitioner was only to properly described the identity of the suit property, which was necessary to determine the controversy between the parties. He further contended that the said facts could not be mentioned earlier in the plaint due to some communication gap between the petitioner and her counsel. Thus, he pleaded that the application moved by the plaintiff-petitioner for amendment of the plaint has been wrongly dismissed.

3. I have duly considered the aforesaid contentions.

4. Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short CPC) reads as under:-

“17. Amendment of Pleadings.-the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

As per proviso to Order 6 Rule 17 CPC, no application for amendment should be allowed after the commencement of the trial unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. To support this view, reference can be made to cases **P.A. Jayalakshmi Vs. H.Saradha & Ors. 2011(7) R.C.R (Civil) 224** and **Ajendraprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors. 2007(1) R.C.R (Civil) 481.**

5. It is not disputed that the present application has been moved for amendment of the plaint when the trial has already commenced and the case was pending for the evidence of the defendant. No plausible explanation has been given in the application as to why the pleas sought to be raised by way of amendment of the plaint could not be raised earlier despite exercise of due diligence. The plea raised by the petitioner-plaintiff that the khasra numbers have been changed in the new jamabandi and the new khasra numbers are to be mentioned is factually incorrect as the khasra/rectangle numbers and killa number never changes, only the khewat number and khatoni number can change. The revenue record containing the khasra number of the suit property was already available to the plaintiff-petitioner at the time of filing the suit. The learned trial Court has rightly

observed that if the amendment is allowed, it will virtually change the subject matter of the suit and will require the *denovo* trial.

6. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

7. Thus, the present revision petition having no merits, is hereby dismissed.

30.11.2016

S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No