

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.1055 of 2015
Date of Decision:12.9.2017**

Raj Mohinder Pal

...Petitioner

Versus

Madhvi Luthra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjay Jain, Advocate for the petitioner.
Mr.Akshay Bhan, Sr. Advocate with
Mr.Santosh Sharma, Advocate for respondent No.1.
Mr.Deepak, Advocate for
Mr.S.K.Aggarwal, Advocate for respondent No.5.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 5.2.2015 passed by the learned trial Court, dismissing the application of the petitioner moved under Order 6 Rule 17 of the Code of Civil Procedure ('CPC' for short), seeking amendment in the plaint.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that another suit between the parties, decision whereof was sought to be made the basis for seeking amendment of plaint in the present litigation, came to be decided on 22.3.2011 by the learned court of competent jurisdiction. Thereafter, issues came to be

framed in the present case on 2.6.2011. Plaintiff-petitioner availed as many as 12 effective opportunities to lead his evidence in the affirmative. However, he kept on delaying the matter and did not examine even one witness, despite availing as many as 12 effective opportunities. Thereafter, application under Order 6 Rule 17 CPC came to be filed by the petitioner, seeking amendment in his plaint. Plaintiff sought to insert the additional prayer for possession by partition and also recovery of mesne profits @Rs.50,000/- per month for use and occupation of the suit property. This amendment was being sought by the plaintiff in his suit for declaration which was filed as far back as on 11.1.2010, wherein the plaintiff has challenged the sale-deed dated 25.7.2002 and also sought a decree for possession as well as permanent injunction. Having said that, this Court feels no hesitation to conclude that the allowing the amendment in the plaint, as sought by the plaintiff-petitioner, would certainly amount changing the nature of the suit, which is not permissible in law. Since the learned trial court has recorded sound reasons in support of the impugned order, the same deserves to be upheld.

So far as the judgment relied upon by the learned counsel for the petitioner in **Gurshinder Singh Vs. Pal Singh and others, 2014 (1) CCC 796** is concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgment, the same has not been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be

examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Further, in case such an application for amendment, as moved by the plaintiff-petitioner in the case in hand, is allowed, very object of Amendment Act No.22 of 2002, adding proviso to Order 6 Rule 17 CPC would stand defedated. It is so said because it is not even the pleaded or argued case on behalf of the petitioner-plaintiff that he could not move the application for amendment of the plaint at an earlier point of time in spite of due diligence.

A bare perusal of the impugned order would show that the learned trial Court arrived at a just conclusion and rightly so, because the plaintiff-petitioner miserably failed to make out a case for amendment in the plaint. In this view of the matter, it can be safely concluded that the learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

Conduct of the parties to the litigation is also one of the relevant considerations. No explanation, whatsoever, is forthcoming on behalf of the petitioner-plaintiff as to why he kept mum in this regard

despite availing as many as 12 effective opportunities for leading his evidence. It seems that the plaintiff-petitioner was trying to misuse the process of court, which cannot be permitted. It goes without saying that every party to the litigation must be vigilant enough to assist the court well in time. No compelling circumstances have been pointed out to this Court, which might have come in the way of the plaintiff-petitioner in moving the application for amendment of the plaint. Further, had the amendment sought in the plaint been of formal nature and very nature of the suit would not have been changed, position might have been different. As noticed hereinabove, petitioner was trying to completely change the nature of the suit by seeking amendment in the plaint, which was rightly declined by the learned trial Court, while passing the impugned order and the same deserves to be upheld, for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference, at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order is supported by sound reasons, because of which no fault can be found with it and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that the instant civil revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present civil revision petition stands dismissed, however, with no order as to costs.

12.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No