

CR No.1372 of 2016
Date of Decision: 21.08.2017

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

[2]. Plaintiffs filed a suit for declaration to the effect that the plaintiffs along with defendants No.1 and 2 are owners in equal shares of the electric motor connection bearing No.DT-80 installed in the suit property. A consequential relief of permanent injunction was also sought, restraining the defendants from causing any sort of obstruction in the use of electric connection for the purpose of irrigating their land.

[3]. In the plaint, the plaintiffs have pleaded the following facts in para Nos.4 and 5:-

“4. That the plaintiffs No.1, 3, Jhirmal Singh and Maghar Singh deceased are owners of joint agricultural land bearing khasra Nos.621, 543/2, 620, 541, 540, 540/1/1, 540/1/2, 540/2, 542/1, 544/1, 545, 544/2, as per khewat No.238, 240, 241, 242, 237, khatuani No.319, 320, 322, 323, 324 as per copy of jamabandi for the year 2007-08 situated in the area of village Dhoorkot Tahliwala Tehsil & District Moga and they were in joint cultivation of land and they used to irrigate their fields jointly from the motor connection bearing No.DT-80 installed in the year 1973 in khasra No.544 out of the common funds of the family. The agricultural equipments and other items required for the produce of crop were purchased jointly from the common funds of the family. The copy of Hadbast No.50, jamabandi for the year 1972-73 is attached. The original of which is not available because the revenue record of jamabandi for the year 1973-74 has already burnt in the revenue record at Faridkot.

5. That in the year 1995 some dispute arose between plaintiffs No.1, 3 and their brothers namely Maghar Singh, Jhirmal Singh and the same was solved with the intervention of the repsectables and writing was executed to this effect in between them that the motor connection bearing No.DT-80 which was in the name of Jhirmal Singh alone shall be owned jointly by all the brother and they are entitled to take water from the motor connection bearing No.DT-80 jointly in equal shares. Copy of the writing is attached.”

[4]. The injunction was refused on the ground that placement of electric connection viz-a-viz the specific khasra number was not pleaded in the suit. By way of amendment, the plaintiffs sought to incorporate khasra No.544 and *jamabandi* for the year 1972-73 in the pleadings of the suit.

[5]. The amendment has been declined by the trial Court on the ground that the stay application has already been dismissed for want of proper details of the land, in which motor connection was allegedly installed.

[6]. Having heard learned counsel for the respondents, I am of the view that plaintiffs' evidence has not yet started. Only affidavit of the plaintiff and list of witnesses have been placed on record. The amendment in question would facilitate the Court in adjudicating the controversy in an effective manner. In the plaint, plaintiffs have pleaded that they are owners in equal shares in the motor connection situated in the suit land. The amendment in question would go in a long way to elaborate the claim of the plaintiffs in order to satisfy the existence of motor connection in khasra No.544. The suit itself is at the initial stage. The amendment would not prejudice the case of the defendants in any manner.

[7]. Order 6 Rule 17 CPC is in two parts. The first part is discretionary and leaves it to the Court to order amendment in the pleadings. The second part is imperative and enjoins the

Court to allow all amendments which are necessary for just decision of the case. All *bona fide* amendments are to be allowed. Reference can be made to the observations made by the Hon'ble Apex Court in (2007) 6 SCC 737, Ram Chandra Shakharaman Mahajan Vs. Damodar Trimbak Tanksale and AIR 2006 SC 1647, Rajesh Kumar Aggarwal Vs. K.K. Modi.

[8]. In view of above, I deem it appropriate to allow this revision petition. Consequently, impugned order dated 28.01.2016 passed by Civil Judge (Senior Division), Moga is set aside. Necessary consequences to follow.

August 21, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No