

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

CR No.1648 of 2017.

Date of Decision: 07.03.2017.

Makhan Singh

....Petitioner.

VERSUS

Dhanwant Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashish Gupta, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant revision petition has been filed assailing the order dated 09.01.2017 passed by learned Civil Judge (Junior Division), Faridkot by virtue of which the application of the petitioner-plaintiff for amendment of the plaint was dismissed.

The submissions made by Mr. Ashish Gupta, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argues that the plaintiff-petitioner and the defendant-respondent are real brothers. The plaintiff filed a suit for declaration challenging the mutation sanctioned on the basis of *Tabdil Malkiyatnama* allegedly executed by his father in favour of the respondent and sought declaration that he is owner to the extent of half share in the suit property and as a consequential relief, prayer for possession was also made. According to the petitioner, the suit property was ancestral and coparcenary property and a registered will dated 19.07.2004 had been executed by his father Surjit Singh bequeathing his entire movable and immovable property in equal shares in favour of the petitioner and the

respondent. The three sisters of the petitioner, who were married, were disinherited from the succession. The *Tabdil Malkiyatnama* had been got executed by respondent Surjit Singh by playing fraud.

Learned counsel further contends that the suit was contested by the respondent. Learned trial Court framed issues on rival contentions of the parties and accorded them opportunity to lead evidence to substantiate their pleas. In order to explain the nature of the property, which the petitioner had already said to be ancestral/ coparcenary property, the petitioner filed an application on 08.09.2016 for amendment in the plaint. The proposed amendment was only of explanatory nature. Certain facts were required to be explained as the revenue record at the time when the petitioner filed the suit was not traceable. The fact that there had been exchange of land by different registered exchange deeds is only to be added in the pleadings. Submitting that the amendment of pleadings can be allowed at any stage in order to reduce multiplicity of litigation and to provide proper justice to both the parties, learned counsel asserted that the order of learned trial Court dismissing his application is illegal and liable to be set aside.

The impugned order passed by learned trial Court, no doubt, is cryptive and sans proper reasoning but the decision taken cannot be said to be illegal or perverse. Admittedly, the case had reached the stage of 'rebuttal evidence' when the petitioner filed the instant application for amendment in his pleadings.

With a view to put an end to the practice of filing application for amendment of pleadings belatedly, a proviso was added to Order VI Rule 17 of the Civil Procedure Code which reads as under:-

of 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.”

The trial commences when the Court applies its judicial mind to the rival contentions of the parties, determines the contentious issues between them and calls them to adduce evidence in support of the same. It has been held by Apex Court in **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** that amendment in pleadings cannot be allowed after the trial had commenced. This Court also in **Jaspal Kaur and another vs. Mohinder Singh and others, 2014(9) R.C.R. (Civil) 2935** has held that in view of proviso to Order VI Rule 17 CPC, the amendment of pleadings cannot be allowed unless the party seeking amendment could not have raised the matter before commencement of the trial in spite of exercise of due diligence.

The proviso to Order VI Rule 17 CPC is in a mandatory form. The jurisdiction of the Court to allow an application for amendment after the trial had commenced had been taken away unless the conditions precedent thereof are satisfied viz the Court must come to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

Copy of the application filed by the petitioner for amendment

way of amendment, the petitioner wants to make addition in Para No.2 of the plaint in order to give details of the land inherited by his father from his grandfather. His further effort is to add Para No.2(a) in order to plead entirely new facts relating to exchange of land by his father with different persons by virtue of three registered exchange deeds executed on different dates.

In order to seek amendment of the pleading, the petitioner alleged that earlier the revenue record was not traceable because of which he could not plead the facts now proposed to be added by way of amendment. However, it is not his case that the alleged registered exchange deeds, which he now wants to plead, were not in his knowledge or were not in his possession. The contention that earlier the revenue record was not traceable deserves to be rejected outrightly as the particulars of the revenue record and the office where it was not traceable were not mentioned. By no stretch of imagination, it can be accepted that despite due diligence the petitioner could not plead the facts which he now wants to add in his pleadings by way of amendment. In fact, with the proposed amendment, he intends to set up a new case that too not just after commencement of the trial but at the fag end of the case.

In said facts and circumstances, the application for amendment filed by the petitioner was rightly dismissed and there being no merit in the revision petition calling for intervention, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

07.03.2017.
jitender sharma