

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

C.R. No.2090 of 2016 (O&M)
Date of Decision: 09.05.2017

Tej Kaur w/o Kirpal Singh, deceased
through L.R

....Petitioner

Versus

Balwinder Singh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Maninder Arora, Advocate
for the petitioner.

Mr. Harkesh Manuja, Advocate
for respondent No.1.

DAYA CHAUDHARY, J.

C.M. No.2143-CII of 2017

This application has been moved for placing on record
Annexures P-4 and P-5.

C.M is allowed. Annexures P-4 and P-5 are taken on record.

C.R. No.2090 of 2016

The present revision petition has been filed under Article 227
of the Constitution of India for setting aside the impugned order dated
05.03.2016, whereby, the application filed by the petitioner under Order 6
Rule 17 CPC for amendment of plaint has been dismissed.

Briefly, the facts of the case are that mother of the petitioner,
namely, Tej Kaur filed a suit for declaring the order dated 11.05.2007
passed by Naib Tehsildar, Rajpura as null and void and also for permanent

injunction restraining respondent No.1 from interfering in the peaceful possession of the petitioner over the land, in dispute. During pendency of the Civil Suit, an application was moved for amendment of the pleadings by stating that at the time of filing of the suit in para No.15 of the plaint, it was wrongly mentioned that defendant No.1 has taken the physical possession of land, whereas, he has taken the possession on papers only. It was also mentioned in the application that the petitioner came to know this fact subsequently and thereafter, an application under Order 6 Rule 17 CPC was moved and the same was dismissed vide order dated 05.03.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the amendment sought in the application is only to replace the word “Paper” in stead of “physical” in para No.15 of the plaint and purpose is not to delay the proceedings in any manner. Learned counsel also submits that the entire evidence has already been lead by both the parties and the said amendment would not require any fresh evidence. It is also the argument of learned counsel for the petitioner that by amendment, neither the nature of the suit is going to be changed nor any prejudice is going to be caused to the other side.

Learned counsel for respondent No.1 submits that a detailed and well reasoned order has been passed while dismissing the application of the petitioner. It cannot be said that the petitioner was not aware about this fact, whereas, the nature of suit is going to be changed as the plaintiff has filed a suit for declaration and permanent injunction for restraining defendant No.1 from interfering into the peaceful possession over the suit property. Earlier also, an application was moved for amendment of the

plaint on 23.03.2012, which was allowed on 10.10.2012. Nothing is mentioned in the application that the plaintiff despite due diligence could not move application earlier and by allowing the amendment, it would be a case of withdrawal of the admission on the part of plaintiff and as such, the application has not been filed with a bona fide intention.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

Admittedly, the facts relating to filing/stage of the suit and also moving of an application for amendment of the pleadings and dismissal thereof are not disputed. The application for amendment of the pleadings has been moved on the ground that at the time of filing of suit, it was wrongly mentioned in para No.15 of the plaint that defendant No.1 has taken the physical possession of land, whereas, defendant No.1 had taken possession on papers only. Subsequently, the petitioner came to know that due to typing mistake, the word “physical” was wrongly mentioned in stead of “paper”. Said application has been dismissed on the ground that the suit is at the fag end and is likely to be decided as both the parties have led their respective evidence. It is also not disputed that earlier also, the application for amendment was moved, which was allowed. Nothing has been mentioned in the application as well as during arguments as to how this amendment is necessary at this stage for just decision of the suit or to resolve the controversy in hand.

It is a settled position of law that while deciding the application for amendment of the pleadings, it is to be seen by the Court that it is bona fide, legitimate, honest and necessary for just decision of the case but

it should not allow mala fide, worthless and dishonest amendments. There is nothing in the application to show the bona fide as to how this amendment is necessary in the pleadings. This application has been filed when the case is at the stage of rebuttal evidence. It appears that the same has been filed just to fill up the *lacuna* as he wants to withdraw the admission made by plaintiff-petitioner in the plaint. The stand of the petitioner in prayer of the suit in sub paras `b' and `c' are contradictory. As per sub para `b', the prayer has been made for passing a decree for permanent and mandatory injunction in favour of plaintiff and against the defendants, thereby, restraining the defendant No.1, their agents, assignees and LR's to interfere into the peaceful possession of the land of the plaintiff and further restraining defendants No.2 and 3 to continue with the tampered entry in the revenue record regarding *girdawari* in the name of defendant No.1 till the final decision of the suit. In sub para `c', the prayer is for passing an order for police help in favour of the plaintiff and against defendant No.1 by extending the necessary help in order to restore the physical peaceful possession of the agriculture land illegally and unauthorisedly taken over by defendant No.1 under the garb of order of defendant No.3 for tampering of entry from the retrospective date. The prayer appears to be contradictory as in sub para `b', the plaintiff-petitioner has himself stated to be in possession of the land, in dispute, whereas, in sub-para `c', it appears that physical possession is not with the plaintiff-petitioner. No case is made out as to how the amendment is necessary and essential to resolve the controversy in hand.

No doubt, the amendment can be made at any stage and even after commencement of trial, in case, the Court comes to the conclusion that

in spite of due diligence, the party could not raise the matter before the commencement of trial.

It has also been observed in various judgments of Hon'ble the Apex Court as well as of this Court that the Courts should be liberal in allowing the amendment of the pleadings but only when it is necessary for the purpose of determining the real controversy between the parties and in case, it does not change the basic nature of the suit. It has also been observed in various judgments that ordinarily, the Court must not refuse bona fide, legitimate, honest and necessary amendment as the purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend the pleadings in such a manner and on such terms as may be in the interest of justice and not to cause any prejudice to the other party.

In the present case, none of the requirement is there as neither it has been made out that the amendment is necessary for just decision of the case or to resolve the controversy in hand nor it has been mentioned and argued that this fact was not in the knowledge of the petitioner, whereas, the earlier application for amendment of pleadings was also allowed.

In view of the facts and law position as discussed above, no interference is required in the impugned order and as such, the revision petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

09.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes