

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

CR No. 2157 of 2017

Date of Decision: 17.07.2017

MUKHTIAR SINGH

-PETITIONER

VS

HARBHAJAN SINGH AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranjit Singh, Advocate, for
Mr. Gopal Singh Nahel, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 28.02.2017 passed by the trial Court whereby application under Order 6 Rule 17 CPC filed by the plaintiffs for amendment of plaint was allowed.

Plaintiffs sought addition of some lines in para No.5 to the effect that Kartar Kaur was also owner in possession of some landed property situated at village Bugra, Tehsil Rampura Phul, District Bathinda. The same was sold by her to her real brothers namely Harbhajan Singh (plaintiff No.1) and Gurcharan Singh vide sale deed No.3532 dated 21.03.1978 registered in the office of Sub Registrar, Rampura Phul.

According to the plaintiffs, the amendment will not

change the nature of suit in any manner, rather the amendment would facilitate the Court to decide the controversy in an effective manner. The suit itself is at the initial stage where the plaintiffs are yet to start their evidence. No doubt, issues were framed on 04.04.2015 and the plaintiffs have availed some opportunities for leading evidence.

Evidently, the sale deed dated 21.03.1978 would be having material bearing on the entitlement of the plaintiffs. The object of the rule is that the Court must try the merits of the case and allow all such amendments which are necessary for determination of real controversy between the parties. The amendment in the pleadings is to be liberally construed. The proviso to the rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however, knowledge and due diligence are the considerations on which bonafides of the parties are to be tested in order to prevent frivolous applications for amendment.

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 determination of real issues between the parties. Unnecessary amendments cannot be allowed. The first condition for

amendment is that it should not be unjust and result in prejudice the case of the opposite party which cannot be compensated in terms of costs or would deprive the opposite party of a valuable right which has accrued to him with the passage of time. The second condition is that the amendment which is perceived to be necessary by the Court should be allowed. The Court can allow the amendment at any stage provided it has necessary bearing on the merits of the case and would curtail multiplicity of litigation in future. Before the Court allow the amendment, it must be satisfied in itself that the amendment is necessary for decision of the real controversy between the parties. If such a condition is not satisfied, the Court can refuse the amendment.

In the instant case, the sale deed dated 21.03.1978 executed by Kartar Singh d/o Kapur Singh in favour of her brothers namely Harbhajan Singh and Gurcharan Singh would go in a long way to alter entitlement of the plaintiffs and therefore, such pleadings are necessary to be incorporated particularly when evidence of the plaintiffs is yet to start. In such eventuality, the opposite party can best be compensated with adequate costs.

In view of above, I find no error of jurisdiction in the order passed by the trial Court, however, awarding of costs to the tune of Rs.1000/- each to defendants No.1,2,3,5 and 10 is

on the lower side.

This revision petition is dismissed with a modification in the award of costs. Instead of award of Rs.1000/- each in favour of defendants No.1,2,3,5 and 10, there shall be award of Rs.2000/- each in favour of aforesaid defendants.

Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

17.07.2017
jjyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No