

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.3583 of 2016

Date of decision : 18.07.2017

Surja Devi and others

.....Petitioners

versus

Bimla Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Naveen Daryal, Advocate
for the petitioners.

Mr. Aman Sharma, Advocate
for respondent No.1.

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ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-petitioner has filed the present revision petition against order dated 06.04.2016, whereby Civil Judge, Junior Division, Dabwali allowed the plaintiff to amend the plaint subject to the payment of Rs.2,000/- as costs.

[2] Brief facts are required to be noticed before dealing with the submissions made by learned counsel for the parties.

[3] Plaintiff filed a suit for declaration that she is owner in possession of the land described in the head note of the plaint. The suit filed by the plaintiff was decreed vide judgement and decree dated 28.11.2013. Defendant Nos.1 to 3 preferred an appeal challenging the aforesaid judgment of the learned trial Court. Learned first appellate Court after setting aside the impugned judgment and decree dated 28.11.2013, remanded the case back to

learned trial Court, granting opportunity to the plaintiff to implead all necessary parties. The judgment passed by learned first Appellate Court on 20.10.2015, which extracted as under: -

“Accordingly, the impugned judgment and decree dated 28.11.2013 stands set aside and the case is remanded back to the learned lower Court with the direction to give an opportunity to the plaintiff to implead all the necessary parties to the suit. The trial Court shall proceed with the case as per discussion made above and shall give short dates for being disposed of the suit within six months positively. Parties through their counsels, are directed to appear before the trial Court on 30.10.2015. In this way, instant appeal filed by the appellants/defendants No.1 to 3 and cross objections filed by the plaintiff/respondent No.1 stands disposed off.”

[4] After the remand, plaintiff filed an application under Order 6 Rule 17, seeking permission to amend the plaint. It was pleaded that mother and daughter of Ashwani has not been impleaded as a party. It has further been asserted that the plaintiff wants to amend the head note of the plaint as due to change of jamabandi, the new particulars of the land are required to be given.

[5] It was further pleaded that there was some error in the description of the land which the plaintiff wants to correct. It was further pleaded to amend the plaint to give correct description of the house, subject matter of the suit.

[6] Learned trial Court after considering all aspects of the matter and after considering the fact that learned first appellate Court had only permitted addition of the parties, allowed the amendment in the interest of justice. It was found by the learned trial Court that amendments sought by the plaintiffs are clerical in nature and do not change the nature of the present suit.

[7] Defendant has filed the present revision petition challenging the

order passed by the learned trial Court dated 06.04.2016, allowing the amendment.

[8] Learned counsel for the petitioners has submitted that the order is not sustainable because it is beyond the directions given by learned first appellate Court in its judgment dated 20.10.2015. It has further been submitted that through amendment plaintiff is changing the nature of the suit and therefore the amendment cannot be permitted.

[9] Learned counsel for the petitioners has further argued that at this stage when trial had been concluded and even appeal had been decided and case remanded back, the amendment of plaint cannot be allowed in view of the provisions under Order 6 Rule 17.

[10] I have heard learned counsel for the parties and with their assistance gone through the paper-book.

[11] As far as first submission of the petitioner, it is suffice to say that the judgment of the learned first appellate Court is not a limited remand. The judgment and decree of the trial Court has been set aside and the Court has ordered re-trial of the suit after impleadment of necessary parties. Once impleadment of necessary parties is being permitted obviously the newly impleaded party would file a written statement and trial would start de-novo. Therefore, learned counsel for the petitioners is not correct in saying that since only addition of the parties were permitted, therefore it is permissible for the trial Court to allow the amendment in the plaint.

[12] Second submission of learned counsel for the petitioners is that it would change the nature of the suit. In my opinion, there is no change in the nature of a suit. The suit as originally filed was for declaration to the effect that the plaintiff is owner in possession of certain land described in the

plaint. Even now after the amendment, the suit remains a suit for declaration that the plaintiff is owner in possession. Only in fact description of the land has been given as per the new jamabandi. Therefore, there is no change in the nature of the suit.

[13] Once the necessary parties are impleaded, the trial is yet to start. Even otherwise the amendment sought are correction of small errors.

[14] For the reasons recorded above, the present revision petition is ordered to be dismissed.

(ANIL KSHETARPAL)
JUDGE

July 18, 2017
sahil soni

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No