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

**Civil Revision No.4049 of 2016 (O&M)
Date of Decision: 11.09.2017**

HARBANS KAUR

.....Petitioner

Vs

HARBANS SINGH AND ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.S. Virk, Advocate
for the petitioner.

Mr. A.K. Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 23.02.2016 passed by Addl. Civil Judge (Sr. Divn.) Samrala whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

[2]. Plaintiff sought to amend the plaint on the ground that in the headnote of the plaint the words "*and mutation no.2208 dated 28.04.1977 is wrong and illegal and the same is liable to be set aside*" were required to be added after the words of the last line i.e. "*joint possession*". The applicant/petitioner also wanted to amend para No.2 of the plaint at page No.5 in 14th

line and wanted to delete the word “no” before the word rider/reference and wanted to add the words after the last line. The prayer clause was also sought to be amended.

[3]. Learned counsel for the petitioner attributed the aforesaid fault due to clerical mistake and due to inadvertence.

[4]. I have heard learned counsel for the parties.

[5]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[6]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in

the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[7]. Evidently, challenge has been made to the *jamabandi* which was prepared on the basis of mutation No.2208. The natural consequence would be to challenge the mutation also as

both prayers cannot go separately. After framing of issues, the evidence of the plaintiff is yet to be started. Even if, it is taken to be commencement of trial, the amendment in my considered opinion is necessary to be incorporated as it would lead to facilitate the Court to decide the controversy in an effective manner.

[8]. In view of above, this revision petition is accepted and the impugned order is set aside. The application filed by the plaintiff/petitioner under Order 6 Rule 17 CPC for amendment of the plaint is allowed, however subject to payment of cost of Rs.10,000/- to be paid to the respondents. The payment of cost shall be the condition precedent for allowing indulgence by the trial Court in the aforesaid context.

September 11, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No