

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

CR No.430 of 2016 (O&M).

Date of Decision: 16.05.2017.

Rameshwar Dass

....Petitioner.

VERSUS

State of Haryana and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Mani Ram Verma, Advocate for the petitioner.

Mr. Pawan Kumar Jhanda, Assistant Advocate General,
Haryana for respondents No.1 to 5.

Mr. G.C. Shahpuri, Advocate for respondent No.6.

SNEH PRASHAR, J.

CM-1411-CII-2016

Allowed, as prayed for.

CR-430-2016

The instant revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 07.12.2015 passed by learned Civil Judge (Junior Division), Hansi dismissing the application filed by the plaintiff-petitioner under Order VI Rule 17 read with Order XXIII Rule 1 of the Code of Civil Procedure (for short, 'the Code') for amendment in the plaint.

The submissions made by Mr. Mani Ram Verma, learned counsel representing the petitioner, Mr. Pawan Kumar Jhanda, learned

Assistant Advocate General, Haryana and Mr. G.C. Shahpuri, learned counsel representing respondent No.6 have been heard.

Learned counsel for the petitioner argued that by way of amendment in the pleadings, the petitioner-plaintiff only wants to give up the relief of declaration to the effect that he is owner in possession of the land (house and Chabutra etc. shown with letters A to L in the site plan attached with the plaint) and for that reason he proposes to only amend the head note of the plaint. Order XXIII Rule 1 of the Code provides that the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Since the proposed amendment was aimed only to abandon the relief of declaration, learned trial court legally erred in dismissing his application.

The reasons given by learned trial court for dismissing the application of the petitioner-plaintiff are as under:-

“In the present case, written statement by defendants no.1 to 5 was filed on 17.09.2011 and on dated 28.09.2015, the case was fixed for rebuttal evidence and arguments and on that day, present application was moved by the plaintiff. By way of present application, the plaintiff wants to make amendment in the head note of the plaint regarding relief claimed by him. The facts stated in the application for amendment were within the knowledge of the plaintiff from the very beginning and no new fact has arisen during the proceedings of the present case. There is no change of circumstances subsequently after institution of the present case. The trial has already been completed in the instant case and evidence of all parties have

been led. The said amendment application is a vague application and the plaintiff has filed the present application just to fill up the lacuna and to delay the proceedings of the present case. Proposed amendment was within the knowledge of the plaintiff from very beginning and it did not arise subsequently i.e. after institution of the present case. In view of above discussion, I am of the considered view that present application is devoid of merits and the same is hereby dismissed.”

Admittedly, the instant application for amendment in the pleadings was filed by the plaintiff when the case was fixed for rebuttal evidence, if any, and arguments. In other words, it was not just after commencement of the trial, rather at the fag end of the case when both the parties had already adduced their evidence in affirmative and it appears that the case was fixed for submission of arguments only, as was mentioned by the plaintiff in his application itself, that the plaintiff came up with a plea of amendment in the pleadings.

The original head note of the suit filed by the petitioner was as under:-

“Suit for Declaration to the effect that the plaintiff is owner in possession of land (House and Chabutra etc.) shown with red colour and marked with letters A to L in the attached site plan, situated within Laldora abadi deh of village Dhani Kendu, Teh. Hansi, Distt. Hisar and the defendants have no right, concerned or title etc. of any kinds and notice issued by defendant No.6 under Section 24(1) of the Haryana Panchayati

Raj Act, 1994, is illegal, against law and facts, against the principle of natural justice, nonest, void abinitio, null and void, without jurisdiction, arbitrary, ultra virus, based upon election rivalry, just to drag the plaintiff in unnecessary litigation and unnecessary expenses and the same is liable to be set aside, recalled and quashed as the same is having no binding effects the rights of plaintiff and further the defendants be restrained from constructing any gali, interfering into the peaceful possession of the plaintiff and causing any damage to the tree of Bat (aged about 70 years old), Latrine and Chabutra shown with red, green colour and marked with letters ABKL in the attached site plan, situated at village Dhani Kendu, Teh. Hansi, Distt. Hisar, forever on the basis of oral and documentary evidence of all kinds under Order 7 Rules 1 and 2 C.P.C.”

By way of amendment, the petitioner proposes to amend the head note as under:-

“Suit for injunction prohibitory to the effect that the defendants be restrained from constructing any gali, interfering into the peaceful possession of the plaintiff and causing any damage to the tree of bat, latrine and Chabutra shown with red and green colour and marked with letters ABKL in the attached site plan situated at village Dhani Kendu, Teh. Hansi, Distt. Hisar and further suit for declaration to the effect that notice issued by the defendant No.6 under Section 24(1) and under Section 24(2) of the

Haryana Panchayati Raj Act, 1994, is illegal, against law and facts, against the principle of natural justice, nonest, void abinitio, null and void, without jurisdiction, arbitrary, ultra virus, based upon election rivalry, just to drag the plaintiff in unnecessary litigation and unnecessary expenses and the same is liable to be set aside, recalled and quashed as the same is having no binding effects the rights of plaintiff because the plaintiff is owner in possession of land (House and Chabutra etc.) shown with red colour and marked with letters A to L in the attached site plan situated within the Laldora Abadi deh of village Dhani Kendu, Tehsil Hansi, Distt. Hisar.”

Although the application (Annexure-P1) filed by the petitioner was under Order VI Rule 17 read with Order XXIII Rule 1 of the Code but the contents of the application as well as the proposed amendment only indicate that to cover up some objection of the defendants, the petitioner applied for changing the language of the head note of the plaint but the claim virtually remains the same. In the application filed, it was not his case that he wanted to abandon any part of the claim. Rather, he pleaded that amendment in the head note was necessary because of a preliminary objection raised by defendant No.6 in his written statement whereby he had alleged that the land in dispute is a compound (chowk) and street (gali) which vest in the Gram Panchayat. The purpose of seeking amendment was not to abandon/ give up a claim but to change the nature of the suit in order to claim the same relief by making an attempt to avoid the objection of the defendant. As mentioned by learned trial court in its order, the written statement was filed on 17.09.2011 whereas the instant application for

amendment of the head note was filed on 28.09.2015 that too when the case had reached the stage of rebuttal evidence and arguments. The plaintiff did not fulfill the pre condition postulated in the proviso to Order VI Rule 17 of the Code as it was not his case that the matter/fact which he intends to incorporate in the head note of his plaint could not be raised earlier despite exercise of due diligence. In fact, he sought amendment in the head note stating that while preparing for rebuttal evidence and arguments, he realized that the amendment was necessary.

Thus, finding that the proposed amendment had been rightly declined by learned trial court and the order suffers from no perversity, illegality or jurisdictional error warranting interference, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

16.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**