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

**Civil Revision No.4957 of 2016
Date of Decision: 16.08.2017**

JAGJIT SINGH

.....Petitioner

Vs

GURDEV SINGH

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioner.

Mr. Inderjeet Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 28.07.2016 passed by Addl. Civil Judge (Sr. Divn.) Bathinda vide which application under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for mandatory injunction on the basis of agreement dated 14.05.2008 vide which plaintiff was entitled to continue irrigation through underground pipes through *Khasra* No.19. Plaintiff sought amendment of the plaint on the ground that due to some

misunderstanding, *khasra* number was written as 19 instead of 46//1. In fact the plaintiff is owner and co-sharer of 19 *karams* in *Khasra* No.46//1.

[3]. The defendant objected to the aforesaid amendment by asserting that the property does not fall in *khasra* No.19 and the agreement even if taken to be on its face value (facts denied), *khasra* No.19 is shown. The plaintiff has already concluded his evidence and the same is fixed for defendant's evidence.

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

[5]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to Court to order amendment in the pleadings. The second part is imperative and obligates the Court to allow all amendments which are necessary for determination of real controversy between the parties. The only requirement is that the amendment in question should not be unjust and should not prejudice the case of the opposite party beyond repair.

[6]. In view of observations made by the Hon'ble Apex Court in **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** the underlining principles for allowing the amendment can be taken note of wherein it was held that the amendment in the pleadings

is to be liberally construed so as to consider the real dispute between the parties and to give effective decision on the basis thereof. The proviso to the rule to some extent curtail absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the parties are to be decided in order to prevent frivolous applications. The object of the Rule is that the Court must try the merits of the case and allow all bona fide amendments which are necessary for determination of the real controversy between the parties.

[7]. In my considered opinion the plaintiff has made out a case for amendment of the plaint. The core issue before the Court would be to consider the context. Mentioning of *khasra* No.19 in place of *Khasra* No.46//1 will not dilute the claim of the plaintiff at the final stage. All bona fides amendments are to be allowed. The amendment in my considered opinion will not change the nature of the suit, rather facilitate the Court to arrive at just conclusion of the case.

[8]. In view of above, impugned order dated 28.07.2016 is set aside. Amendment in the plaint is allowed, subject to payment of cost of Rs.15,000/- payable to the respondent. The payment of cost shall be the condition precedent for allowing indulgence for amendment of plaint by the trial Court.

[9]. With the aforesaid observation, this revision petition is allowed.

August 16, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No