

C.R. No.5310 of 2016

Gurpreet Kaur
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high court

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

C.R. No.5310 of 2016

Date of Decision: 23.05.2017

Harpal Singh

....Petitioner

Versus

Satpal Singh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rai Singh Chauhan, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 15.07.2016 passed by Additional Civil Judge (Senior Division), Dasuya, whereby, the application filed by the plaintiff under Order 6 Rule 17 read with Section 151 of CPC for amendment of plaint has been dismissed.

Briefly, the facts of the case are that the petitioner-plaintiff filed a suit for separate possession by way of partition stating therein that he is joint owner having half share of the suit land with respondent No.1. Said suit was contested by the respondents by way of filing written statement. During pendency of the suit, the petitioner-plaintiff filed an application for amendment of plaint stating therein that there was an inadvertent typographical error in mentioning khasra number, which is necessary to be corrected and the same was not intentional but has come to the notice of the petitioner subsequently. The nature of suit is not going to be changed and no prejudice would be caused to the party opposite. However, said

application was dismissed without issuing notice to the party opposite vide order dated 15.07.2016, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that it was simply a typographical mistake in mentioning khasra numbers and area and as soon as it came to the notice of the petitioner, an application was moved by him. Learned counsel also submits that the trial Court should have issued notice to the party opposite just to verify the facts and the party opposite is not going to be prejudiced in any manner. Learned counsel further submits that the application moved by the petitioner has wrongly been dismissed only on the ground of delay, whereas, the amendment can be made at any stage.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order, whereby, the application for amendment of plaint has been dismissed.

The relevant portion of impugned order is reproduced as under :-

“ After hearing arguments of counsel for the plaintiff and gone through the case file and record, I am of the considered view that the plaintiff has filed the suit for partition and today the case is fixed for rebuttal and arguments. Even arguments counsel for the parties have been advanced after completion of argument counsel for the plaintiff filed this application for seeking amendment due to typographical mistake in area and khasra no.17//11/1, area 3 kanals 14 marlas in place of area khasra no.17//1/1 area 4 kanals 9 marlas and due to typographical mistake left the khasra number 17//2/1 (ok-14 Marlas). The evidence of the plaintiff and defendant has already completed. Moreover, this fact is not a new fact in the knowledge

of the plaintiff and plaintiff has filed the suit for partition. So, application is not maintainable at this stage and same stands dismissed. Case is adjourned to 4.8.2016 for rebuttal evidence and argument if any.”

A perusal of impugned order shows that simply it has been mentioned that the evidence of plaintiff and defendant has been completed and as such, the application is not maintainable at this stage. It is specifically mentioned in the application that due to typographical mistake, the area and khasra number in the plaint have wrongly been mentioned. It has also been mentioned that the petitioner is not interested to adduce any evidence and no prejudice would be caused to the other party. It is also clear that no notice was issued in the application and without issuing any notice to the other party, the same has been dismissed.

As per provisions of Order 6 Rule 17 CPC, the Court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if the amendment is necessary for determining the real question in controversy between the parties. Even the amendment can be allowed after the commencement of trial, in case, the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

It has been held in various judgments of Hon'ble the Apex Court as well as judgments of this Court that the approach of the Court should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. However, the amendment should be bona fide one.

The Privy Council in the case of ***Ma Shwe Mya v. Maung Mo***

Hnaung AIR 1922 PC 249 has observed as under :-

“ All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.”

Same view has been taken by Hon'ble the Apex Court in **Baldev Singh and others vs Manohar Singh 2006(6) SCC 498** and **Basavan Jaggu Dhobi vs Sukhnandan Ramdas Chaudhary (Dead) 1995 Supp(3) SCC 179**.

The aforesaid judgments have been relied upon by Hon'ble the Apex Court in **Usha Balashaheb Swami and others vs Kiran Appaso Swami and others 2007(2) RCR (Civil) 830**.

While exercising the power to allow the amendment, it is to be seen that by allowing the amendment, the litigation is minimized and also that the amendment which is necessary for the purpose of determining the real controversy between the parties should be allowed, in case, it does not change the basic nature of the suit. The amendment in plaint can be allowed even after dismissal of appeal, in case, there is requirement to do justice by considering the facts and circumstances of the case.

It has been held by Hon'ble the Apex Court in case **Ramesh Kumar Agarwal vs Rajmala Exports Pvt. Ltd. & others 2012(2) RCR (Civil) 739** that ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and it should never permit mala fide and

dishonest amendments. The purpose and object of Order VI Rule 17 of CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be in the interest of justice and not to cause any prejudice to the other party.

In the present case also, the amendment is only with regard to mentioning of khasra number and area, which has been sought to be amended due to typographical error in the plaint. Even no notice has been issued to the party opposite and the application has been dismissed. The suit is for possession by way of partition and in case, the notice was issued, the other party could not have denied the facts. The impugned order appears to have been passed without any application of mind and without following the provisions of relevant rule and order and without recording any findings as to how that is not necessary to resolve the controversy in the case at hand. Simply it has been said that the application has been moved at the later stage and the same has been dismissed.

Accordingly, the present petition is allowed and the impugned order dated 15.07.2016 passed by Additional Civil Judge (Senior Division), Dasuya, is hereby set aside.

However, the trial Court is directed to consider the application of the petitioner afresh after issuing notice to the party opposite and pass necessary orders in accordance with law and in view of observations as made above.

(DAYA CHAUDHARY)
JUDGE

23.05.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes