

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5098 of 2017 (O&M)
Date of Order:03.08.2017

Vijay Bhushan Arya

..Petitioner

Versus

Bachan Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Lamba, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral).

Defendant has filed the present revision petition, under Article 227 of the Constitution of India, challenging the order dated 20.07.2017, passed by the learned Civil Judge (Jr. Division), Faridabad.

Plaintiffs had filed an application seeking permission to amend the plaint. The application was allowed vide order dated 24.01.2017. Thereafter amended plaint was filed on 17.02.2017. Defendant filed an application for removing the amended plaint from the court file on the ground that the amended plaint is not in consonance with the amendment allowed. The aforesaid application filed by the defendant has been ordered to be dismissed by the Court while recording as under:-

“In the earlier application for amendment the plaintiff has sought certain amendments which was allowed by this Court and thereafter amended plaint was filed on 07.02.2017 wherein the defendants sought objections that the plaintiff has inserted certain new things which

were not sought in the application dated 1.10.2013. However, the plaintiff has reproduced the amendment application in the amended plaint dated 27.2.2017. It has been argued that in the earlier amendment application dated 1.10.2013 numbering of the para no.6 and 7 has been inadvertently written whereas they were the part and parcel of the para no.5. After perusal of the application dated 1.10.2013 and amended plaint dated 27.2.2017, the plaintiff has sought the declaration of sale deed dated 19.6.2003 and 24.6.2003 as null and void as the same were obtained by the defendants no.1 and 2 after playing fraud upon the plaintiff. Moreover it has been sought that GPA have been executed on the same day are also obtained by playing fraud as the executant of GPA namely, Smt. Gango Rani wife of Hari Singh had already died on 12.3.1997 and plaintiff made this report the police for IR. These amendments were sought the proposed amendment is no going to substantiate one cause of action to another distinct cause of action. Subject matter of the suit remains the same even after the amendment. There is no need of saying that the court may allow amendments to take notice of subsequent events and to avoid of multiplicity of proceedings. Every amendment should be allowed which does not cause prejudice to the other which helps in determining the real question of controversy. Hence by this application

*defendants failed to explain how and under what circumstances they are going to prejudice by mentioning those facts in the amendment plaint which is/was the part and parcel of the application dated 1.10.2013. Moreover, it has been held in **Sajjan Kumar vs. Ram Kishan 2005 (13) SCC 89** Civil Procedure Code, 1908-Order 6 rule 17-Amendment of plaint in final stages of suit-When permissible-Imposition of costs-incorrect description of suit property in plaint-Proposed amendment necessary to bring real question in controversy between the parties to the fore-Refusal to permit amendment likely to create needless complications at stage of execution in the event of success of plaintiff in the suit-Though applicant-plaintiff ought to have been diligent in the promptly seeking amendment in plaint at an early stage of suit, more so when error in question had been pointed out in WS held, still due to the above reasons, amendment should have been allowed-Amendment allowed with imposition of costs of Rs.1000.”*

Defendant has filed this revision petition challenging the aforesaid order.

I have heard counsel for the appellant and with his able assistance gone through the application for amendment originally filed.

As per Chapter-21 of the Punjab and Haryana High Court Rules and Orders, the procedure for seeking amendment in the pleadings has been

prescribed, which reads as under:-

“Order VI, Rule 17- Amendment in pleading:-

(1) The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

(2) Every application for amendment shall be in writing and shall state the specific amendments which are sought to be made, indicating the words or paragraphs to be added, omitted or substituted in the original pleading.”

In this case, the application for amendment moved by the plaintiffs, was allowed. Now the allegation is that while submitting amended plaint, certain paragraphs have been added which were not part of the application under Order 6 Rule 17 CPC.

Learned trial Court has appreciated the facts available on the file and has found that number of paragraphs No.6 and 7 in the application dated 01.10.2013 has been inadvertently written, whereas these pleadings were in fact part of paragraph 5 only.

Counsel for the petitioner has submitted that it is not an inadvertent error but in fact paragraphs No.6 and 7 were separately numbered in the application seeking amendment of the plaint.

I have considered the arguments of counsel for the petitioner.

However, I am unable to agree.

A reading of the application, filed under Order 6 Rule 17 CPC shows that in fact the quotes were closed after the end of paragraph 5, which appears to be inadvertent error. A reading of the application shows that the plaintiffs had moved an application for amendment of the pleadings and paragraphs 6 and 7 were in fact a part of the pleadings, which were sought to be added in the plaint.

Therefore, there is no ground to interfere with the order passed by the Courts below. The revision petition is dismissed.

August 03, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No