

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

CR No. 5211 of 2017(O&M)

Date of decision: 11.8.2017

Gurdev Kaur

....Petitioner

VERSUS

Hazoor Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. J.S. Brar, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 25.07.2017 passed by the Additional Civil Judge (Senior Division), Gidderbaha whereby application for amendment of plaint filed by the petitioner has been dismissed.

The petitioner filed a suit for permanent injunction restraining the respondents/defendants from sowing any crop or amalgamating the site of watercourse bearing khasra No.1374 (5-18) in their land as this watercourse was sanctioned in consolidation and the petitioner was using this watercourse for irrigation of her fields comprised in killa No.16 (7-4), 17 (7-11), 18/1 (2-13) and for other land. Copies of jamabandi of khasra No.1374 and site plan depicting the watercourse were also annexed with the plaint. The petitioner also placed reliance upon *aks shajra kilabandi* wherein khasra No.1374 was marked as ABC and accordingly the said fact was pleaded in head-note of the plaint as well as in prayer clause.

The respondents/defendants filed the written statement and raised an issue in para 2 (reply on facts) by averring to the following effect:-

“2....Plaintiff has wrongly shown killa No.20/1 of rect. No.13 as water course which is otherwise running as gair mumkin rasta at the spot which adjoins with killa no.20/2 of rect. No.13 both the above said killa No.20/1 and 20/2 are owned and possessed by the defendants. Plaintiff has produced a wrong and fabricated akas kilabandi and have succeeded in obtaining ex-parte stay order. Whereas in akas sijra kilabandi prepared in the halqa Patwari on 16.5.2017 killa No.20/1 not shown as water course, rather it has been shown as vacant land....”

During the course of trial, Gurdas Singh Patwari Halqa, village Doda, Sub Tehsil Doda was examined on 13.07.2017 and his statement is Annexure P-8. In the concluding lines of his statement, he has stated in the following words:-

“...It is correct that in site plan dated 9.5.2017 issued by Kewal Singh Patwari Halqa, water course khasra no.1374 which has been shown in killa No.20/1 and 20/2 of mustil no.13 has been shown wrongly. Point mark D to mark E is about showing above said wrong water course in original certified site plan dated 9.5.2017 and is Ex.C-1 on the file.”

Subsequent thereto, the present application was filed by the petitioner for amendment of the plaint in order to delete the words ‘which is also shown by words ABC in the enclosed *aksh shajra kilabandi* / site plan’ in the 4th and 9th line of head-note of the plaint and 5th line in the prayer clause and 4th line of second prayer clause.

After having heard counsel for the parties and taking into consideration contentions of the petitioner and detailed reply to the application for amendment filed by the respondents, the trial Court dismissed the application for the reason recorded in para 4 of the impugned order and a relevant extract therefrom reads as follows:-

“4.....So, keeping in view of the statement of concerned Halqa Patwari and written statement submitted by the defendants, the plaintiff has concealed the material facts from the court and by concealing material facts the ex parte stay order was granted to her. I agree with the contention raised by counsel for the defendants that it is not a typographical or clerical mistake and plaintiff has concealed material facts from the court. To my opinion, the proposed amendments will entirely change the nature and subject matter of the present suit, which will cause serious injustice or irreparable loss to the opposite party. In this regard, case law, **2015(SUPPL.) CCC 851 (A.P.) Sakuntalamma vs. K.V. Govindaswamy and ors, Civil Revision Petition No.2995 and 2993 of 2014 D/17.06.2015** referred by Ld. Counsel for the respondents/defendants, wherein it is held that “Civil Procedure Code, 1908, O.6.R.17- Amendment of pleadings-withdrawing an admission cannot be permitted” is applicable to an extent. Hence the application in hand, stands dismissed being devoid of any merit...”

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition.

Counsel for the petitioner has not disputed that on the basis of pleadings raised in the plaint supported by *aksh shajra kilabandi* depicting the disputed khasra No.1374 as a watercourse shown by words ABC, application of the petitioner for grant of stay was considered and ex parte stay was allowed in favour of the petitioner. The petitioner sought to amend the plaint after statement of Gurdas Singh, Patwari Halqa was recorded and a relevant extract therefrom has been reproduced hereinbefore.

Hon’ble the Supreme Court in **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27** after noticing proviso appended to Rule 17 of Order 6 CPC, has culled out certain important aspects to be considered while dealing with an application for amendment of pleadings. The Court has laid down that amendment cannot be allowed, if it causes such a prejudice to the other

side for which he cannot be compensated with costs. The relevant extract from para 67 and 68 of the judgment reads as follows:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - (2) Whether the application for amendment is *bona fide* or *mala fide*?
 - (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
- And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

One of the principles laid down by the Apex Court is that the Court has to consider whether the application for amendment is *mala fide* or *bona fide*. The petitioner depicted the water-course in dispute as ABC in the enclosed aks shajra kilabandi/site plan to prove *prima facie* that the said water course is a source of irrigation for her land comprised in killa numbers detailed hereinabove.

On the basis of depiction in the aks shajra marked ABC, the Court granted *ex parte* stay in favour of the petitioner. The respondents/defendants, in the written statement, pointed out that plaintiff has wrongly shown killa No.13//20/1 as water course but the same is gair

mumkin rasta at the spot and in aks shajra kilabandi prepared by Halqa Patwari, it is shown as vacant land. They also levelled allegations that the petitioner has produced wrong and fabricated aks shajra kilabandi and succeeded in getting ex parte stay. Though, it would be a matter of evidence if the petitioner intentionally produced a wrong aks shajra kilabandi but the petitioner has failed to satisfy the Court that the proposed amendment is necessary for complete and effective adjudication of the matter in controversy.

From the facts on record at this stage, it appears that the petitioner has filed the application to wriggle out of her liability of producing a wrong aks shajra kilabandi and averments raised in regard thereof. That being so, it prima facie proves that the application for amendment is not bona fide rather the same is actuated by malice.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

AUGUST 11, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no