

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

Civil Revision No.53 of 2017

Date of decision:- February 28, 2017

JARNAIL SINGH AND OTHERS

....PETITIONERS..

VERSUS

INDER SINGH AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Lalit Sharma, Advocate,
for the petitioners.

Mr. G.S. Bhatia, Advocate,
for the respondents.

JASPAL SINGH, J.

By virtue of instant civil revision petition preferred under Article 227 of the Constitution of India, the petitioners have sought setting aside of order dated 01.12.2016 passed by Additional Civil Judge, Senior Division, Sangrur, District Sangrur whereby an application moved by the petitioners/plaintiffs under Order VI Rule 17 CPC for amendment of the plaint, has been dismissed.

2. While assailing the impugned order, it has been vehemently argued by learned counsel for the petitioners-plaintiffs that the trial court has failed to correctly appreciate the fact that amendment sought to be made regarding area of land measuring 48 Bigha 13 biswa instead of 50 Bigha

and 13 Biswa and area measuring 4 Bigha and 5 Biswa of Khasra No. 244 instead of 6 Bigha and 5 Biswa, has been mentioned due to inadvertence and oversight. The same being clerical mistake is liable to be corrected in the heading of the plaint as well as in other parts of the plaint wherever the area is mentioned as 48 Bigha 13 Biswa instead of 50 Bigha 13 Biswa and the area mentioned in Khasra No. 244 as 4 Bigha 5 Biswa instead of 6 Bigha and 5 Biswa. The area which had fallen to the share of defendants No. 1 and 2 was wrongly mentioned as 91 Bigha and 11 Biswa instead of 89 Bigha and 9 Biswa and the area of Khasra No. 244 measuring 2 Bigha mentioned wrongly in the area which had fallen to their share. Since, the measurements given in the plaint with regard to the area fallen to the share of petitioners/plaintiffs as well as that of defendants No. 1 and 2 are on account of oversight/inadvertence and due to clerical mistake. The respondents-defendants are not going to suffer any irreparable loss or are not going to cause any kind of prejudice in any manner in case the proposed amendment is allowed. Rather, it would depict the correct picture based on the family settlement arrived at in between the parties to the instant lis.

3. Learned counsel for the petitioners/plaintiffs has further contended that the trial court has also miserably failed to take note of the fact that aforesaid averments for amendment of the plaint are supported by evidence brought on record, which include jamabandi for the year 1983-84 showing the exclusive possession of Mohinder Singh over the land measuring 27 Bigha 9 Biswa and 23 Bigha 4 Biswa which comes out to be 50 Bigha 13 Biswa. Otherwise also, the law with regard to amendment of the pleadings is very liberal and amendment of the plaint sought by the

plaintiffs under Order VI Rule 17 CPC is of general nature. In the present case, it is clearly proved on record that the amendment sought by the petitioners regarding correction of the areas in the head-note of the plaint as well as other paras of the plaint is only of clerical nature and is not going to change the nature of the suit.

4. While relying upon the pronouncement of Hon'ble Apex Court delivered in case "***Rajesh Kumar Aggarwal v. K.K. Modi, 2006(2) RCR (Civil) 577***", it has been submitted by learned counsel for the petitioners/plaintiffs that the object of Order VI Rule 17 CPC is that the Court should try the merits of the case that comes before it. It should liberally allow all *bona fide* amendments necessary for determining the real question in controversy between the parties. First part of Rule 17 CPC gives ample discretion to the Court but the second part is imperative and enjoins the Court to allow all necessary amendments. Rule of amendment is essentially a rule of justice, equity and good conscience and power of amendment should be exercised in the larger interest of justice. Procedural obstacles ought not to impede the dispensation of justice, especially, when the basic structure of the suit is not going to be changed, instead of going in second round of litigation. The parties should be allowed to raise all issues connected with the same dispute even by taking cognizance of subsequent events arising during pendency of litigation.

5. While concluding the arguments, it has been submitted by learned counsel for the petitioners-plaintiffs that since the proposed amendment is not going to change the nature and character of the suit and further that the defendants/respondents are not going to be prejudiced in any

way, the amendment should have been allowed by the trial court, which have been wrongly declined while ignoring the basic principles governing the amendment of the pleadings.

6. On the other hand, learned counsel for the respondents while supporting the impugned order, has submitted that there is no infirmity or illegality in the same and it is absolutely inconsonance with the provisions contained in Order VI Rule 17 CPC. While relying upon the pronouncement of Hon'ble Apex Court captioned as ***“Salem Advocate Bar Association, T.N. v. Union of India”***, 2005(3), RCR (Civil) 530, it has been urged by the learned counsel for the respondents that the object of proviso is to prevent frivolous applications, which are filed to delay the trial or disposal of the suit. While dealing with Order VI Rule 17 CPC, the Hon'ble Apex Court has observed as under:-

“Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act, 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless 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. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial. There is no illegality in the provision.”

7. While referring to the facts and circumstances of the present case, it has been pointed out by learned counsel for the respondents that application under Order VI Rule 17 CPC was moved at the fag end of the suit when both the parties have already concluded their evidence i.e. after the commencement of the trial. Otherwise also, there is nothing on record to suggest that the amendment sought by the petitioners-plaintiffs in the plaint was not in their knowledge or that in spite of due diligence, they could not raise the matter prior to commencement of the trial. Learned counsel for the respondents accordingly prayed for dismissal of the petition.

8. This Court has weighed the rival contentions of learned counsel for the parties and scanned the impugned order and has come to the conclusion that there is nothing to interfere in the impugned order as the same is absolutely inconsonance with the provisions contained under Order VI Rule 17 CPC and further that it does not call for any interference by this Court as the ld. trial court has exercised its discretion in a judicious manner.

9. No doubt, all the rules and procedures are handmaid of justice and the language employed by the draftsmen of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.

10. Undisputably, Order VI Rule 17 CPC deals with the amendment of the pleadings. By amendment Act, 46 of 1999, though, this provisions was deleted yet, it was restored by the Amendment Act 22 of 2002 but with an added proviso to the effect that no application for amendment shall be allowed after the commencement of the trial unless the Court comes to the conclusion that in spite of due diligence, the party could

not raise the matter before the commencement of trial.

11. A glance at the proviso appended to Order VI Rule 17 CPC makes it crystal clear that to some extent it has curtailed the absolute discretion of the Court to allow amendment at any stage. In the present scenario, if, an application is filed after the commencement of the trial, it is obligatory upon the party concerned to prove that in spite of due diligence, the said amendment could not be sought earlier.

12. Adverting to the facts and circumstances of the instant case, it is not in dispute that application for amendment of the plaint was moved by the petitioners/plaintiffs at the fag end of the suit when both the parties had concluded their evidence. The alleged family settlement arrived at between the parties was very much in the knowledge of the petitioners/plaintiffs at the time of filing of the suit as well as when the issues were culled out from the pleadings of the parties. Parties have also led their evidence in support of their respective pleadings. When the suit was at its penultimate, the application under Order VI Rule 17 was moved. The petitioners/plaintiffs have miserably failed to establish that in spite of due diligence, they could not move an application for amendment of the plaint prior to the commencement of the trial. Thus, this Court is of the considered view that the impugned order is absolutely inconsonance with the law applicable to the facts and circumstances of the case in hand. Thus, no interference by this Court is legally and factually justified in the impugned order.

13. In the light of the aforesaid discussion, this Court is of the considered view that the trial court has rightly declined the application for amendment of the plaint. The instant petition being devoid of merits is

dismissed whereby impugned order dated 01.12.2016, is upheld.

14. No order as to costs.

February 28, 2017
sonika/avin

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes