

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

CR No.588 of 2014

Date of Decision: 13.07.2017

Smt. Saroj and anotherPetitioners

Versus

Jai Parkash (deceased) through LR's and others
... Respondents

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

Present:Mr. Kuldeep Tiwari, Advocate
for the petitioners.

Mr. Anil Shukla, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioners have assailed the order dated 30.10.2013 passed by Civil Judge (Junior Division), Kurukshetra, whereby an application under Order 6 Rule 17 CPC was allowed.

[2]. On 10.01.2011, Saroj (defendant No.1) wife of Jai Parkash Gaur (defendant No.2) filed a suit for permanent injunction on the basis of sale deed dated 18.03.2010 having purchased 14 marlas i.e. 14/996 share out of 49 kanals 16 marlas of land. The suit was ultimately decreed on 11.11.2014.

[3]. Jai Parkash also filed a suit for declaration and permanent injunction on the basis of sale deed dated 10.01.2011 against Saroj, Jai Parkash Gaur and others. At the time of filing of the suit, the earlier suit filed by Saroj was pending. During pendency of the suit filed by Saroj, an

application for amendment of the plaint was filed on the ground that during pendency of the suit, defendants No.1 and 2 forcibly dispossessed the plaintiff in the month of August, 2011 and therefore, relief of possession was sought to be incorporated in the suit along with relief of *mesne* profit. The suit was at initial stage. The amendment was allowed by the trial Court vide order dated 30.10.2013 with a cost of Rs.1000/- to be deposited in DLSA, Kurukshetra.

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

[5]. Apparently, the amendment was sought on the ground that during pendency of the suit, defendants No.1 and 2 succeeded in dispossessing the plaintiff. The suit itself was at the initial stage. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give the decision in a more satisfactory manner. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and due diligence are the considerations on which *bona fide* of the party has to be tested in order to prevent frivolous applications for amendment. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. The controversy highlighted in

Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (Dead) and others, (2007) 6 SCC 737 and **Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647** can be relied in the aforesaid context.

[6]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court to allow all amendments which are necessary for determining real issue between the parties.

[7]. Before the amendment can be allowed, the Court should satisfy itself whether such an amendment is necessary for appropriate decision in the case. If the condition is not satisfied, the amendment can be rejected. This is the basic test which governs the discretion of the Court in granting or refusing the amendment. The other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no prejudice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted.

[8]. The Court should not refuse *bona fide* and legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation also plays a

pivotal role in exercise of such discretion.

[9]. Looking to the parameters laid down in **Revajeetu Builders and Developers Vs. Narayanaswami and Sons and others, 2010(1) RCR (Civil) 27** and **Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the power to allow the amendment is wide enough to exercise this discretion at any stage of the litigation.

[10]. The present case is at the initial stage. The amendment which is being sought to be introduced is on account of subsequent events allegedly took place during pendency of the suit. In my considered opinion, the discretion exercised by the trial Court cannot be faulted with. The present revision petition is accordingly dismissed.

13.07.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No