

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

CR No. 6667 of 2015

Date of Decision: 04.07.2017

RAJEEV VERMA

-PETITIONER

VS

OM PARKASH AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Sirphikhi, Advocate,
for the petitioner.

Mr. Gagandeep Singh Simble, Advocate,
for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 01.09.2015 passed by Civil Judge (Junior Division), Batala vide which prayer for amendment of plaint under Order 6 Rule 17 CPC was declined.

Learned counsel for the petitioner submitted that vide sale deed dated 13.05.1997, plaintiff and his parents sold the ground floor of the property without roof to defendant No.1. The plaintiff and his parents never sold the roof of the property and in this way, defendants have no right, title and interest with the roof of the suit property. The word 'ground floor' of the property is sought to be incorporated in place of 'shop' in the original plaint. Instead of 'underground', word 'ground floor' is sought to

be added.

Reference to the sale deed dated 13.05.1997 would ventilate the stand of the petitioner in the context of amendment in question for which an application was moved before the trial Court and the same was dismissed. The amendment in question is claimed to be on account of typographical error in the heading of the plaint.

This Court while issuing notice of motion passed the following order on 08.10.2015:-

“Learned counsel inter alia contends that the amendment sought is clearly a typographical mistake as the same is fortified from the sale deed dated 13.05.1997, which provides that the sale deed was executed by the plaintiff and his parents in favour of defendant No. 1 herein of the ground floor of the building without roof.

Notice of motion for 08.01.2016.

The trial Court shall adjourn the case beyond the date fixed by this Court.”

After hearing the submissions made by learned counsel for the parties, I am of the view that the amendment in question can be allowed at this stage. The effect of amendment

would be seen at the time of conclusion of trial.

The amendment in question in my considered opinion will not change the nature of suit in any manner, rather the same is on account of clerical mistake. Plaintiff has led some evidence. Defendants evidence is yet to be started. The amendment in the pleadings is to be liberally construed so as to consider real dispute between the parties and to give effective decision on the basis thereof. 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 bonafides of the parties are to be tested in order to prevent frivolous applications. The object of the rule is that the Court must try the merits of the case and allow all bonafide amendments which are necessary for determination of real controversy between the parties.

Reference can be made to the observations made by the Apex Court in **(2007) 6 SCC 737 Ram Chandra Shakharaman Mahajan v. Damodar Trimbak Tanksale and AIR 2006 SC 1647, Rajesh Kumar Aggarwal v. K.K. Modi.**

Order 6 Rule 17 CPC has two parts. The first part is discretionary and leaves it to the Court to order amendment in the pleadings. The second part is imperative and enjoins the Court to allow all amendments which are necessary for

determination of real issue/controversy between the parties. All amendments are to be allowed which would satisfy the aforesaid two conditions. The conditions sought are that the amendment should not be unjust and it should not prejudice the case of the opposite party beyond cure. It should not be such that the opposite party would not be compensated in terms of costs or would deprive the opposite party of a valuable right which has accrued to him with the passage of time.

Since the case itself is fixed for plaintiff evidence, therefore, in view of law laid down on the issue, I am of the view that the amendment in question would not deprive the defendants of their valuable right to cross-examine the witnesses of the plaintiff at the relevant stage.

In view of above, this petition is allowed, however, subject to payment of costs of Rs.10,000/- payable to the respondents.

Payment of costs would be the condition precedent for granting indulgence by the trial Court in the light of observations made hereinabove.

04.07.2017
jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No