

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

CR No. 688 of 2013 (O&M)
Date of Decision: 13.09.2017

DALWINDER SINGH

-PETITIONER

VS

RAJINDER SINGH AND ORS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

None for respondents No.1 to 3, 5 to 8, 11 to 13.

Mr. Hitesh Ghai, Advocate, for
Mr. Namit Gautam, Advocate,
for respondent No.4.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 19.12.2012 passed by the Civil Judge (Junior Division), Ludhiana whereby the application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint as well as an application under Order 1 Rule 10 CPC for impleading Rajinder Singh and Parminder Singh as defendants No.13 and 14 were dismissed vide the common order.

Learned counsel for the petitioner, at the very outset, submits that the prayer in terms of Order 1 Rule 10 CPC has become infructuous as Surjit Singh-defendant No.1 died during

pendency of the suit and his sons namely Rajinder Singh and Parminder Singh have already been brought on record as legal representatives of deceased-Surjit Singh vide order dated 17.01.2013 passed by the trial Court.

Now, amendment of the plaint in the context of sale deed executed by Surjit Singh in favour of his sons namely Rajinder Singh and Parminder Singh is in issue. Since, the sons of Surjit Singh have already been brought on record as legal representatives, their presence could serve dual status as legal representatives of deceased-Surjit Singh as well as subsequent vendees claiming title under Surjit Singh by virtue of sale deed in their favour.

I have considered the submissions made by learned counsel for both the parties.

An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which bona fides 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. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

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. The first condition for the amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the

provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

Respondents No.1 to 3, 5 to 8, 11 to 13 were duly served but none has appeared on their behalf as per numerous orders on record.

Respondent No.4 has appeared through counsel. Learned counsel for respondent No.4 states that no relief has been claimed qua respondent No.4 in the present revision petition as the prayer is confined only to subsequent vendees namely Rajinder Singh and Parminder Singh who purchased the land from their father Surjit Singh.

In view of attending facts and circumstances of the case, I deem it appropriate to allow the application under Order 6 Rule 17 CPC for amendment of the plaint. Necessary incorporation is allowed to be made in the pleadings.

Normal consequences to follow.

Disposed of.

13.09.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No