

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

**Civil Revision No.6756 of 2017 (O&M)
Date of Decision: 12.12.2017**

Mohinder Singh and another

.....Petitioners

Vs

Raj Singh and others

....Respondents

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

Present: Mr. M.K. Mittal, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 15.07.2017 passed by the Addl. Civil Judge (Sr. Divn.) Charkhi Dadri whereby application under Order 6 Rule 17 CPC for amendment of the plaint was allowed.

[2]. Brief facts are that respondents No.1 and 2/plaintiffs filed a suit for specific performance on the basis of agreement to sell dated 04.11.2010 in respect of land measuring 10 Kanals 14 Marlas being 1/5th share of total land measuring 53 Kanals 12 Marlas.

[3]. The suit was contest by the defendants/petitioner.

Defendant/petitioner No.1 filed written statement and from the written statement, the plaintiffs came to know that defendants No.3 to 4 have transferred the suit property to one Dhanpati wife of Mahender Singh vide Release Deed No.2174 dated 25.11.2011 and Release Deed No.2373 dated 21.12.2011 without knowledge of the plaintiffs. In view of above it was felt necessary to amend the title of the plaint by adding name of Dhanpati as defendant No.5. Para No.8-A was sought to be added in the plaint in the following manner:-

“8(a). That after the execution of the agreement dated 04.11.2010, the defendant No.3 and 4 with mala fide intention have relinquished/transferred her share in the suit property vide Release Deed No.2174 dated 25.11.2011 and Release Deed No.2373 dated 21.12.2011 in favour of Dhanpati. The alleged Release Deed are illegal, null and void and not binding on the rights of the plaintiff and liable to be set aside as the defendant No.3 and 4 in collusion with defendant No.1 have executed this Release Deed in favour of wife of defendant No.1 and mother of defendant No.2 and 3 in favour of the wife of defendant No.1 just to harm the plaintiff and to frustrate agreement dated 04.11.2010.”

[4]. In prayer clause of the plaint, plaintiffs intended to add the following words:-

“and the Release Deed No.2174 dated 25.11.2011 and 2373 dated 21.12.2011 are illegal, null and void and not binding on the rights of the plaintiff and liable to be set

aside.”

[5]. Further para No.11 of the plaint was sought to be amended in the following manner:-

“11. That cause of action arose to the plaintiff firstly on 04.11.2010 then on 16.05.2011 and lastly on 06.07.2011 within the territorial jurisdiction of Hon'ble Court.”

[6]. Trial Court after due consideration of the application, allowed the same vide the impugned order subject to payment of cost of Rs.1,000/- to be paid to the contesting defendant.

[7]. I have considered the submissions made by learned counsel for the petitioners.

[8]. 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 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. 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.*

[9]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to allow 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.

[10]. From the record, it can be found that the written statement was filed in the year 2015 and the application in question came to be filed promptly on 15.08.2015. The trial Court by taking into consideration the merits in the prayer, allowed the same as the proposed amendment was found to be necessary for proper adjudication of the case.

[11]. In view of aforesaid, no error of jurisdiction can be found in the impugned order dated 15.07.2017 passed by the Addl. Civil Judge (Sr. Divn.) Charkhi Dadri. Resultantly, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

December 12, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No