

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

CR No.7087 of 2017(O&M)

Date of decision: 1.11.2017

Shakuntala and others

.....Petitioners

VERSUS

Smt. Bohti and others

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rakesh Dhiman, Advocate for the petitioners.

REKHA MITTAL, J.

CM No.22201-CII of 2017

Heard.

Allowed as prayed for.

Annexure P-4 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.7087 of 2017

Challenge in the present petition has been directed against the order dated 05.09.2017 passed by the Civil Judge (Senior Division), Mewat whereby application filed by the respondents/plaintiffs under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the plaint has been allowed.

Counsel for the petitioners/defendants has submitted that the respondents/plaintiffs have filed the suit claiming themselves to be class-I heirs of Bharat Singh (since deceased) erstwhile owner of the suit land. As per plea of the defendants, after death of Sultan, only son of Bharat Singh, Balley son of Chandgi (defendant No.1) was adopted by Bharat Singh and

Khajani widow of Sultan performed kareva marriage with Balley. It is further submitted that earlier the respondents/plaintiffs filed an application for amendment of the plaint that was dismissed by the trial Court vide order dated 13.01.2017. The order dated 13.01.2017 became subject matter of challenge before this Court in Civil Revision No.967 of 2017 and the said order was set aside by this Court with liberty to the respondents/plaintiffs to file a fresh application to be decided by the trial Court in the light of directions issued by the Court. It is argued with vehemence that the trial Court has not taken into consideration the directions issued by this Court while allowing application for amendment, therefore, the impugned order is liable to be set aside.

Another submission made by counsel is that in the original suit, the respondents/plaintiffs made reference to land measuring 70 Kanals 13 Marlas in paras 8, 9 and 17 thereof but by way of the proposed amendment, they substituted land measuring 70 Kanals 13 Marlas to that of 60 Kanals 6 Marlas with a clear intent to wriggle out of the objection raised in the written statement that the suit is bad for non-joinder of necessary parties. It is argued that as 10 Kanals 7 Marlas of land was acquired by the State of Haryana (Public Health Department) and compensation in regard thereof was received by Balley, impleading of State of Haryana through Department of Public Health was essential for complete and effective adjudication of the matter in controversy.

The last submission made by counsel is that by permitting the respondents/plaintiffs to reduce the area of land, objection raised by the petitioners/defendants with regard to non-joinder of necessary parties would be rendered nugatory, causing a serious prejudice to their contest which cannot be compensated by payment of costs.

I have heard counsel for the petitioners, perused the paper-book particularly the order dated 13.02.2017 passed in CR No.967 of 2017, application for amendment of the plaint (Annexure P-2), reply thereto (Annexure P-3) and the order impugned.

Counsel for the petitioners has not raised any dispute with regard to plea of the respondents/plaintiffs to make amendment in para 4 and 7 of the plaint referred to in clauses (a) and (b) of sub-para (i) of para 5 of the application. However, he has expressed his grievance qua allowing amendment in paras 8, 9 and 17 of the plaint referred to in clauses (c) and (e) of sub-para (i) of para 5 of the application whereby the respondents (plaintiffs) wanted to insert total land to be 60 kanals 6 marlas in place of 70 kanals 13 marlas. The solitary plea raised by counsel for the petitioners is that objection taken in the written statement with regard to non-joinder of State of Haryana through Department of Public Health would be rendered nugatory. It is difficult to fathom as to how prejudice is likely to be caused to the petitioners for which costs is not the remedy in case the respondents/plaintiffs are allowed to give up their claim with regard to land that was acquired by the State of Haryana. Had the respondents/plaintiffs not amended the plaint for reducing the area from 70 kanals 13 marlas to 60 kanals 6 marlas i.e. 10 kanals 7 marlas that was acquired by State of Haryana, at best, in absence of State of Haryana, the Court might not have accepted their claim qua the land acquired by the State. Conversely, the trial Court was competent to implead State of Haryana as a party if it was of the view that presence of State of Haryana through Public Health Department is necessary for complete and effective adjudication of the matter in controversy by invoking Order 1 Rule 10 (2) of the CPC. In this

view of the matter, contention raised by counsel for the petitioners is not meritorious and liable to be rejected.

So far as plea of the petitioners that the impugned order does not comply with the directions issued by this Court in order dated 13.02.2017, the same is not meritorious and accordingly rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to either of the parties at the time of final adjudication of the suit.

NOVEMBER 1, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no