

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

CR No.8419 of 2016(O&M)

Date of decision: 27.9.2017

Kavita

.....Petitioner

VERSUS

Joginder Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. Rohit Ahuja, Advocate for the respondents.

REKHA MITTAL, J.

CM No.20883-CII of 2017

Application is allowed as prayed for.

Annexure P-6 is taken on record subject to just exceptions.

Disposed of accordingly.

CR No.8419 of 2016

The present petition directs challenge against order dated 02.09.2016 passed by Additional Civil Judge (Senior Division), Kapurthala whereby application for amendment of the plaint has been dismissed.

Counsel for the petitioner has submitted that the petitioner prayed for amendment of the plaint on two counts detailed in para 6 sub paras (a) to (c) of the application for amendment (Annexure P-4). It is further submitted that the petitioner gives up her claim for seeking amendment proposed in sub para (c) of para 6. With regard to amendment

proposed in sub-paras (a) and (b) of para 6, counsel would urge that in para 3 of the plaint there is specific averment that the defendants/respondents are trying to encroach upon and fix a gate shown as a passage to the open Taur and street in the ownership and possession of the plaintiff. At the point shown as yellow in the site plan as point A and B, the defendants are trying to affix a gate and thereby stopping egress and ingress of the plaintiff into the open Taur. However, in the head-note and prayer clause of the plaint, the petitioner failed to specifically mention the words "at point AB as shown in the site plan". It is argued with vehemence that the proposed amendment would neither change nature of the suit nor introduce a fresh cause of action, therefore, no prejudice shall be caused to the respondents/defendants in case the petitioner is permitted to make necessary amendment in the head-note and prayer clause of the plaint. Another submission made by counsel is that the respondents can well be compensated with costs for failure of the petitioner to incorporate these facts in the plaint originally filed.

Counsel for the respondents has opposed the prayer for amendment with the submission that the instant application was filed by the petitioner after availing umpteen opportunities for adducing evidence. In addition, it is argued that the proposed amendment is hit by the proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure, 1908 (in short 'CPC') as the application has been filed after commencement of trial.

I have heard counsel for the parties, perused the paper-book particularly the various annexures appended with the petition.

So far as challenge to the impugned order dismissing the application for making amendment incorporated in sub para (c) of para 6 of the application, the same is dismissed as not pressed. Perusal of the plaint

would substantiate plea of the petitioner that in para 3 of the plaint there is specific reference that the defendants intend to install a gate at the point shown as yellow in the site plan as point A and B but the said fact has not been specifically incorporated in the head-note and prayer clause of the plaint though in the head-note as well as in the prayer clause there is reference to the rough site plan. Proviso appended to Rule 17 of Order 6 CPC does not create a complete embargo against allowing amendment of pleadings. Amendment can be allowed at any stage of the proceedings unless it causes prejudice to either side for which costs is not the remedy. When the facts and circumstances of the present case are examined in the light of principles culled out by Hon'ble the Supreme Court of India in **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27**, application filed by the petitioner seeking amendment of the plaint reproduced in sub paras (a) and (b) of para 6 of the application can be allowed so that any technicality in future may not cause prejudice to right of the petitioner to seek adjudication of her claim in accordance with law.

For the foregoing reasons, the petition is partly allowed in the aforesaid terms subject, however, to payment of costs of Rs.5,000/-. Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

SEPTEMBER 27, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no