

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

Civil Revision No.8470 of 2015

Date of decision:- April 19, 2017

DHANVIR SINGH

...PETITIONER..

VERSUS

SAHIB SINGH AND ANOTHER

...RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Om Pal Sharma, Advocate,
for the petitioner.

Mr. S.S. Panag, Advocate,
for the respondents.

JASPAL SINGH, J.

By virtue of instant civil revision petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 21.04.2015 passed by Civil Judge (Junior Division), Ludhiana whereby an application filed by respondents-plaintiffs under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC"), has been allowed.

2. Briefly stated, the facts giving rise to the instant petition are that respondents-plaintiffs filed a suit for possession, permanent injunction and mandatory injunction on 26.07.2013 whereas petitioner-defendant filed written statement. Along with said civil suit, application under Order XXXIX Rules 1 and 2 CPC was also and while disposing of said

application, the parties were directed to maintain status quo with regard to the existing position till the disposal of the suit vide order dated 16.09.2013. However, the said order was challenged by petitioner-defendant before lower appellate court by way of an appeal and that appeal was allowed vide order dated 05.03.2014. Aggrieved against the order dated 05.03.2014, respondents-plaintiffs filed a Civil Revision No.3211 of 2014 before this Court, which is pending disposal. Subsequently, the respondents-plaintiffs filed an application dated 30.01.2015 under Order VI Rule 17 read with Section 151 CPC seeking amendment of plaint mentioning the wrong facts particularly that the petitioner has raised construction during the pendency of civil suit whereas from the bare look of the written statement, it is apparent that construction was raised much prior to the filing of civil suit, accordingly, respondents sought relief of mandatory injunction. Thus, there is no question of raising construction during the pendency of civil suit. The petitioner-defendant has also filed reply to the application wherein he clarified the facts so stated in the written statement but the ld. trial court without considering the aforesaid facts, allowed proposed amendment as prayed for by the respondent-plaintiff vide impugned order dated 21.04.2015.

3. Assailing the impugned order dated 21.04.2015, it has been submitted by learned counsel for the petitioner that the same is absolutely against the settled canons of law.

4. A bare perusal of of the facts stated in the written statement as well as reply to the application under Order VI Rule 17 CPC, it is apparent that there were no new facts, which would warrant any amendment so

sought. Rather, application for amendment of plaint was filed by respondents-plaintiffs just to fill up the lacuna in their pleadings, that too, after going through the written statement filed by the petitioner. But despite that fact, application for amendment has been allowed by the Id. Trial court, that too, by ignoring the aforesaid facts vide order dated 21.04.2015.

5. Learned counsel for the petitioner further contends that the impugned order whereby the amendment of the plaint has been allowed is absolutely in violation of the provisions contained in Order VI Rule 17 CPC particularly the proviso, which provides that application for amendment shall be allowed after the trial has commenced; unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the case in hand, pleadings were completed and issues were also framed and case was fixed for evidence when an application for amendment of the plaint was moved by respondents-plaintiffs. It cannot be said that the amendment sought was not in the knowledge of the respondents-plaintiffs at the time of filing the suit or that in spite of due diligence, they could not have raised the matter prior to the commencement of the trial. Thus, taking the case of the petitioner from either of angles, the impugned order is not sustainable in the eyes of law and is liable to be set aside. Consequently, application for amendment of plaint moved under Order VI Rule 17 CPC deserves to be dismissed.

6. On the other hand, learned counsel for the respondents-plaintiffs has supported the impugned order dated 21.04.2015. He contends that the construction of the house was raised by the petitioner-defendant during the pendency of suit over the disputed property. Apart from

construction, during the pendency of suit, it also came to the notice of respondents-plaintiffs on 17.12.2014 that the exact land of the portion shown in red colour owned by respondents-plaintiffs, which is in illegal possession of the petitioner-defendant measuring 140-2/9 square yards instead of 105 square yards with dimensions as 33'x38'-3 instead of 25'x38'. Similarly, the exact COMPASS reading of the property reads the directions as diagonal and accordingly, the directions may sometimes be taken as East instead of North, South instead of East, West instead of South, North instead of West and vice versa. Since, new facts were required to be brought to the notice of the court by way of amendment of the pleadings, which are necessary for the purposes of effective adjudication and determination of real controversy in question, the amendment has been rightly allowed.

7. While concluding arguments, it has been submitted by learned counsel for the respondents that since the impugned order is absolutely in consonance with the legal proposition, it calls for no interference by this Court and deserves to be upheld by way of dismissal of instant revision petition.

8. This Court has gone through the rival submissions made by learned counsel for the parties and has scrutinized the file and evidence but find the various submissions made by learned counsel for the petitioner without any legal and factual substance.

9. It is well settled proposition of law that the main purpose of allowing the amendment is to minimise the litigation and the plea. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. Now, in the instant case, an

application for amendment of the plaint under Order VI Rule 17 CPC has been moved after the commencement of the trial, thus, the party seeking amendment of the plaint is to satisfy the Court that he in spite of due diligence could not have raised the matter before the commencement of the trial.

10. Here, it would be pertinent to mention that though the petitioner/defendant has alleged that the construction was already in existence much prior to the filing of the suit by the respondents-plaintiffs but this fact has been tried by the respondents. He has taken a clear cut stand that after the passing of impugned order and when this Court was seized of the matter by way of revision, the petitioner-defendant raised the construction of the house. Since, there is a specific allegation with regard to the raising of construction of house during the pendency of suit and now, the respondents-plaintiffs has sought the amendment in this regard, it cannot be said to be illegal or detrimental to the case of the petitioner-defendant. Rather, the proposed amendment would enable the Court to decide the matter in controversy more effectively and judiciously. Apart from it, there is also some change in the boundaries and to remove any doubt or ambiguity with regard to the boundaries, the amendment in this regard is also required to be made in the plaint. Moreover, the Court is competent to allow the amendment that may be necessary to determine the real controversy between the parties,, provided it does not cause injustice or prejudice to other side.

11. Adverting to the facts of the case in hand, the proposed amendment can neither be said to be filed just for filling up the lacuna in the

pleadings nor it can be declined simply because, it has been sought after the commencement of trial. There is no complete bar for seeking the amendment after the commencement of trial but it has to be established by the party concerned that in spite of due diligence, he could not bring that matter to the notice of the Court. In the case in hand, the construction of the house is alleged to have been raised during the pendency of the suit and the amendment allowed by the trial in this regard cannot be said to be against the proviso contained under Order VI Rule 17 CPC or the settled proposition of law.

12. Finding no merit in the instant revision petition, the same is dismissed but with no order as to costs.

April 19, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No