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

**Civil Revision No.1125 of 2018 (O&M)
Date of Decision: 13.09.2018**

SURINDER KAUR

.....Petitioner

Vs

**RAJ SINGH SINCE DECEASED THRU HIS LRS
DHARAMWATI ETC AND ORS.Respondents**

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

Present:Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Parveen Kumar Rohilla, Advocate
for respondents No.1(i), 1(b) and 1(c).

RAJ MOHAN SINGH, J. (Oral)

CM No.4414-CII of 2018

This is an application for placing on record amended memo of parties as in the earlier memo of parties, incorrect address of respondent No.1 was mentioned due to an inadvertent mistake.

For the reasons mentioned in the application, the same is allowed.

Amended memo of parties is ordered to be taken on record.

Main case

[1]. As per office report, respondents No.2 and 3 have been duly served. However, none appeared on their behalf. With the concurrence of learned counsel for petitioner and respondents No.1(i), 1(b) and 1(c), I proceeded to take up the case on merits.

[2]. Petitioner has assailed the order dated 03.02.2018 passed by the Civil Judge (Jr. Divn.) Sonapat vide which prayer for amendment of the plaint in terms of Order 6 Rule 17 CPC was declined.

[3]. Brief facts of the case are that the plaintiff filed a suit for declaration by alleging the property to be partly constructed and partly vacant at the time of filing of the suit. During currency of the suit proceedings, the property was constructed to the level of 2nd floor. The assertion of the plaintiff was denied by the defendants by claiming that the construction was done out of the joint funds. Respondents also pleaded that in the oral family settlement, it was resolved that portion 'ABCD CBJK' was to be left for using the same to be as common *rasta*. Portion of 2 and half floors would be constructed by the family out of joint funds of defendant No.1. Further completion of said portion would be allotted to defendant No.3. In fact after completion of 2 and half storied building, the allotment was done and possession was

delivered to defendant No.3 and since then, defendant No.3 is maintaining the possession of the property to the exclusion of other family members. The defendants have also concluded their evidence.

[4]. With reference to the aforesaid plea, learned counsel for the petitioner submitted that the plaintiff has also closed her evidence with reference to the construction raised by her. The proposed amendment is only to incorporate plea of raising construction during pendency of the suit. Factum of construction is admitted between the parties. The controversy is only with regard to a party constructing the same and the same can be proved at the time of conclusion of the suit with reference to the evidence to be led by the parties. Plaintiff shall not lead any evidence in addition to the evidence already led by her while leading her affirmative evidence.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. Plaintiff seeks the proposed amendment only on the premise that since the evidence has already been led by her, at a later stage the same may not be discarded for want of pleadings to that effect. Since factum of construction of the building to the level of 2 and half floors is an admitted fact, at this stage, the Court is not in a position to comment upon as

who has constructed the same, but the fact remains that the construction has been raised either during pendency of the suit or before that.

[7]. The amendment, even if allowed would not change the nature of the suit, nor it will introduce any foreign plea. The plaintiff undertakes not to lead any further evidence on record. It is a settled principle of law that all bona fide amendments should be allowed leaving the parties to establish their respective case at the conclusion of the trial.

[8]. In view of above, this revision petition is allowed. The impugned order dated 03.02.2018 passed by the Civil Judge (Jr. Divn.) Sonapat is set aside and the application for amendment of the plaint is allowed, however subject to payment of costs of Rs.20,000/- to be deposited with the Registrar General of this Court, who shall further deposit the same in Kerala Chief Minister's Distress Relief Fund towards relief to Kerala flood victims.

September 13, 2018

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No