

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.2226 of 2018
Date of Decision:05.04.2018

Nirmaljit Singh

....Petitioner

Versus

Yash Pal & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sandeep Goyal, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, challenge has been laid to orders dated 06.02.2017 and dated 04.01.2018 of the trial Court, whereby separate applications of the petitioner for correction of clerical error in the application for amendment of his plaint and for amendment of the plaint was dismissed by the trial Court.

In nutshell, the petitioner-plaintiff filed a suit for mandatory and permanent injunction to restrain the respondents from encroaching upon and raising any construction on Khasra No.236, Khewat No.175 and Khatoni No.269, of the revenue estate of Patti Gaddar, Kaithal, on the basis of jamabandi for the year 2009-2010, claiming his co-sharership.

Upon notice, the respondents appeared and contested the suit. In the written statement filed, they took the stand that the disputed Khasra number is 235 and not 236.

Noticing this fact, the petitioner moved an application before the trial Court for correction of the aforesaid clerical mistake by way of amendment which after contest was rejected by the trial Court vide order dated

06.02.2017(Annexure P-8) on the ground of maintainability observing that instead, the petitioner ought to have filed an application for amendment of his plaint under Order 6 Rule 17 CPC.

In consonance with the above observation of the trial Court, the petitioner moved another application under Order 6 Rule 17 CPC for amendment of the plaint, which has been dismissed vide impugned order dated 04.01.2018 (Annexure P-11).

Learned counsel for the petitioner *inter alia* contends that typographical/clerical mistake occurred in the plaint was not intentional. The respondents are already aware of the actual Khasra No.235, so they would not take it as a surprise, if the amendment is allowed for effective adjudication of the real controversy between the parties.

Having given considerable thoughts to the submission made by learned counsel for the petitioner, I find merit in the instant petition for the simple reason that amendment sought qua khasra number of the suit land, which has occurred due to typographical mistake, which according to the learned counsel for the petitioner, is not going to change the nature of the suit nor in any manner would prejudice the rights of the respondents, inasmuch as they are already aware of the fact that the suit property pertains to Khasra No.236 and 235 as well. Since the trial is at initial stage, therefore, the amendment sought, if allowed, would not, in any way, prolong the litigation.

In view of the discussion made above, this petition is allowed, subject to payment of costs of ₹30,000/-, to be deposited with the Member Secretary, District Legal Services Authority, Kaithal.

This order has been passed without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which

may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

A copy of this order be also sent to Member Secretary, District Legal Services Authority, Kaithal, to recover the costs.

05.04.2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No