

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

250

CR No.3043 of 2018

Date of Decision: December 10, 2018

Jagjeet Singh

.....Petitioner(s)

versus

Gaje Singh (since deceased through LRs.)and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Kaushal Advocate for the petitioner(s).

Mr. Shoaib Khan, Advocate for the respondents..

RAJ MOHAN SINGH, J. (Oral)

The petitioner has preferred this Revision Petition against the order dated 20.04.2018 passed by Additional Civil Judge (Sr. Division)-cum-Sub Divisional Judicial Magistrate, Dabwali vide which the application under Order 6 Rule 17 CPC for amendment of the plaint was rejected.

2. Plaintiff filed a suit for declaration to the effect that there is a passage having width of 2 karams X 72 karam through the land comprised in Khewat No.806, Khatoni No.1043, Rect. No.160 Killa No.8/1/2(0-8), 13/2(7-12), on eastern side situated within the revenue estate of Village Maujgarh, Tehsil and District Sirsa as per Jamabandi for the year 2012-13 and the said passage is in existence

and running since the last more than 20 years and the plaintiff has been using the said passage to have access to his land.

3. Permanent injunction was also sought seeking to restrain the defendant from causing any type of indulgence in the smooth running of the passage in dispute. While drafting the pleadings of the plaint the word 'eastern' has been recited in place of word 'western'. After completion of the pleadings, evidence of the plaintiff is going on before the trial Court. At this stage an application for amendment of the plaint was moved seeking to replace word 'eastern' by word 'western' on the strength of agreement to sell, which was executed between the predecessor of the petitioner/respondent No.1. The agreement to sell has clear recital of the passage being in existence towards western side. Necessary recital of the agreement to sell is to the following effect:-

“ The possession of the land will be given at the time of registration of sale deed out of land comprised in Rect. No.160, Killa Nos.18(8-0), 23(8-0) which is in my possession and for reaching to the above said land, there is a way in Rect. No.160, Killa No.13, 8 on western side which is in my possession. Hence this agreement to sell has been reduced into writing for record. The expenses of all kinds regarding registration will be borne by the vendee.”

4. On the basis of aforesaid agreement to sell, sale deed was executed on 29.11.1996. Learned counsel for the petitioner submits that the amendment in question is a bone fide amendment as the word ' eastern ' appearing in the plaint was on account of some clerical mistake.

5. On the other hand learned counsel for the respondent submits that in fact after filing of the plaint by the plaintiff replication to the written statement was filed by the respondent and in the replication also, the plaintiff took the same stand as that of the plaint. He remained unsuccessful in the application under Order 39 Rules 1 and 2 CPC before High Court and at this belated stage, the amendment should not be allowed.

6. Perusal of the agreement to sell would show that there is recital of *raasta* towards western side, sale deed also mentioned the factum of agreement to sell even though there is no recital of *raasta* in the sale deed but the recital of agreement to sell is mentioned in the sale deed itself. It is not the case of respondent that there were two agreements executed between the parties.

7. Order 6 Rule 17 CPC is in two parts. The first part is directory and leaves to the Court to order amendment in the pleadings. The second part is imperative and enjoins the Court to allow all amendments, which are necessary for just decision of the case. The object of the Rule is that the Court must try the merits of the case and allow all *bona fide* amendments which are necessary for determination of real controversy between the parties. Reference can be made ***Ramchandra Sakham Mahajan Vs. Damodar Trimbak Tanksale (Dead) and Ors. (2007) 6 SCC 737*** and ***Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647.***

8. The original provision was deleted by Amendment Act 46 of 1999, however, it was again restored by Amendment Act No.22 of

2002, wherein the provision was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that in spite of due diligence the parties could not have raised the matter before commencement of the trial. The aforesaid provision to some extent curtails absolute discretion of the Court. The object is only to see merits of the case. The aforesaid principle has been reiterated by the Hon'ble Apex Court in ***J. Samuel and others Vs. Gattu Mahesh and others, 2012 (1) RCR (Civil) 903*** and again in ***Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965.***

9. Looking into the controversy, I am of the view that the Amendment is not such, which would curtail the right of the parties in any manner. The omission is clerical in nature and keeping in view the stage at which the aforesaid clerical omission was detected by the plaintiff, I deem it appropriate to burden the plaintiff with a costs of Rs.20,000/- to be paid to the respondents. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid contest.

10. This Revision Petition is disposed of accordingly.

December 10, 2018

sonia arora

[RAJ MOHAN SINGH]

JUDGE

Whether speaking/reasoned :

Yes

Whether Reportable :

Yes/No