

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 415-2016 (O&M)

Date of decision: 22.03.2018

Pal Singh

.....Petitioner

versus

Harbhajan Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Ivan Singh Khosa, Advocate and
Mr.R.S.Ghuman, Advocate for the petitioner
Mr.P.K.Kataria, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 5.12.2015, passed by learned Civil Judge (Junior Division), Phagwara, vide which, an application filed by the plaintiff under Order VI Rule 17 CPC 1908 and Order I Rule 10 CPC 1908 i.e. for amendment of the plaint and impleading Gurbachan Singh, Gurwinder Singh, Surinder Kaur, Gurjit Kaur, Sudesh Punj and Swaran Sangar as party was dismissed.

I have heard learned counsel for both the parties and have also carefully gone through the file.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 13.11.2002 executed by defendant no.1 in favour of the plaintiff. He has also challenged the sale deed dated 24.12.2007 executed in favour of defendant no.2 regarding land measuring 2 kanals 10 marlas. In the alternative, suit for recovery. Suit was

filed way back in the year 2008. Written statement in the said suit was filed in the year 2009, in which certain pleas were taken to the effect that the Civil Court decree passed in favour of defendant no.2 for specific performance of agreement has been set aside on the application of the legal heirs of Nazar Singh. Plaintiff remained mum and the trial continued. On 5.2.2015, the present application for amendment and impleading above noted six defendants was filed. Further amendment was sought to be made that the registered sale deed No.3943 dated 20.12.2007 executed by defendant nos.7 and 8 through their alleged special power of attorney Chuhar Singh Sangha through their alleged special power of attorney Daljit Singh Ahluwalia pertaining to land measuring 3 kanals 12 marlas out of the suit property in favour of Sudesh Punj, is null and void, just like sale deed no.3942 dated 24.12.2007 executed by defendant nos.3 and 4 through their special power of attorney Chuhar Singh Sangha through special power of attorney Daljit Singh Ahluwalia. For this purpose, necessary amendments are sought to be made.

In the year 2002, the amendment was carried out by the legislature in the provisions of Order VI Rule 17 CPC. The amended provisions are reproduced as under:-

17. Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no 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.

Proviso to the said amendment shows that no 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 parties could not have raised the matter before commencement of trial.

In this case, it was pleaded in the written statement that the legal heirs of Nazar Singh have got an ex-parte decree passed in favour of defendant no.1 set aside and therefore, the plaintiff knew that now he is required to make necessary amendments. Plaintiff claims agreement to sell from defendant no.1 in his favour which was on the basis of agreement to sell from Nazar Singh through his power of attorney.

Learned counsel for the petitioner has argued that amendment can be allowed even at this later stage. He has referred to the authority Sajjan Kumar vs. Ram Kishan, 2005(13) 89. In this case, the incorrect description was given which was allowed to be corrected. Yet in another case, Surender Kumar Sharma vs. Makhan Singh 2009(4) RCR (Civil) 597, Apex Court allowed the amendment in the rent petition on the ground that it is necessary to decide the real controversy between the parties and cannot be declined on the ground that it is at later stage. Similarly, in Puran Ram vs. Bhaguram and another, 2008(2) RCR (Civil) 499 only description of property was allowed to be corrected.

In the present case, all the facts came to the notice of the plaintiff when the defendant filed written statement. Plaintiff wants to make comprehensive amendment by impleading six more defendants and also

challenging another sale deed. Such comprehensive amendment is not a mere formality and it will start a de-novo trial from the stage of summoning. The additional fact is that said application was moved after six years of filing of written statement.

I am of the view that the said facts came to the notice of the plaintiff when the written statement was filed and that comprehensive amendment is sought to be made. As such, the trial Court was justified in rejecting said amendment at such a belated stage.

The present revision petition stands dismissed accordingly.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

22.03.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No