

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

CR No.418 of 2018 (O&M)

Date of decision : February 20, 2018

Rajinder Kaur

..... Petitioner

Versus

Narinder Kaur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Manuj Nagrath, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Notice of motion.

Ms. Kanwal S. Walia, Advocate accepts notice on behalf of respondent No.1.

Impugned in the present revision petition is the order dated 12.12.2017 passed by learned Civil Judge (Jr. Divn.), N.R.I. cases, Jalandhar, vide which an application under Order VI, Rule 17 CPC, 1908, for amendment of plaint filed by the plaintiff-petitioner was dismissed.

Plaintiff-petitioner has filed a suit that he along with defendant is co-sharer in the property described in the head note of the plaint, measuring 9 marlas, 177 square feet and for setting aside the gift deed dated 26.02.1999, executed by Avtar Singh, brother of the parites.

After the framing of the issues and when the evidence of the plaintiff was being led, the present application for amendment was filed, by way of which, the plaintiff wants to change the measurement of property EG

934 from 9 marlas 177 square feet to 20 marlas approximately and also to mention the correct boundary towards South and in place of 'Bank of Baroda' wants to mention 'Earlier Factory/Karkhana at present Bank of Baroda'. The plaintiff also wants to make amendment to the effect that Battan Singh, father of the plaintiff had expired in August, 1981, leaving behind his wife Jaswant Kaur, one son Avtar Singh and four daughters, namely Narinder Kaur, Rajinder Kaur (plaintiff), Surinder Kaur and Ravinder Kaur. Battan Singh left behind a registered Will bearing No.58, dated 07.05.1981, bequeathing the property in favour of his wife Jaswant Kaur, regarding the area measuring 9 marlas 177 square feet and the remaining portion to his son Avtar Singh. Through the said registered Will, Battan Singh bequeathed the portion shown 'B' in the site plan to his wife Jaswant Kaur and remaining portion shown as 'A' in favour of his son Avtar Singh.

It is further sought to be pleaded that gift deed dated 26.02.1999, is otherwise inoperative as it does not pertain to the property inherited by Avtar Singh through the Will of his father Battan Singh. The gift deed dated 26.02.1999 regarding the property shown 'B' measuring 9 marlas, 177 square feet was inherited by Jaswant Kaur, the mother of the plaintiff through the above Will of Battan Singh dated 07.05.1981. In this way, Avtar Singh was not competent to make any gift deed of the property, which was not owned by him.

It is further sought to be pleaded that Avtar Singh died issueless and intestate on 18.09.2012, leaving behind the plaintiff and the defendants as his legal heirs. In this manner, the plaintiff has inherited 1/4th share in the

property of Avtar Singh shown as 'A' in the site plan bearing No.EG 934, Mohalla Prem Nagar, Nehru Garden Road, Jalandhar.

Jaswant Kaur, died intestate in the year 1993-94, leaving behind her son Avtar Singh and four daughters. In this manner, portion shown as 'B' in the site plan became the ownership of the legal heirs of Jaswant Kaur to the extent of 1/5th share of each. The other consequential amendments are also sought to be made.

I have heard learned counsel for the petitioner as well as learned counsel for respondent No.1 and have also carefully gone through the case file.

The provisions of Order VI, Rule 17 CPC, 1908 were amended in the year 2002 and proviso is added as reproduced under:-

“Provided that no application for amendment shall be allowed after the trial is commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial.”

A perusal of the proviso to the said rule shows that no application for amendment shall be allowed after the trial is commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. Otherwise all the amendments are to be allowed, which are necessary for determining the real question of controversy between the parties.

In the present case, the other facts except the area were within the knowledge of the plaintiff when she filed the suit. It cannot be said that the plaintiff came to know about the said fact when PW3 was examined.

The application for amendment was filed when the evidence of the plaintiff had already begun. The trial Court has observed that when the attorney of the plaintiff has appeared as PW1 on 26.04.2016, he admitted the area of the disputed property as 12 marlas. It was further observed that the plaintiff has concluded his entire evidence and thereafter unnecessarily 5-6 adjournments have been sought without any reason. So far as the amendment regarding mentioning the correct area and correct boundary is concerned, it is necessary for determining the real question in controversy and is of clerical nature. The amendment to change the measurement of the area and mentioning the correct boundary is allowed, subject of payment of costs of ₹10,000/- to be paid to the opposite party. However, the remaining part of the amendment cannot be allowed at this stage.

As such, the present revision petition is partly allowed.

(KULDIP SINGH)
JUDGE

February 20, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No