

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

Sr. No.121

C.R. No.4581 of 2018

Date of decision: 20.07.2018

Bhawani Singh

....Petitioner

versus

Pankaj and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. V.B. Aggarwal, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 12.07.2018 (Annexure P-3) passed by the Additional District Judge, Kurukshetra (for short – 'the Appellate Court') through which the application filed by the petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short – 'the Code') had been dismissed.

The facts in brief which have been culled out from the record as also after hearing the learned counsel for the petitioner are that the petitioner alongwith others instituted a suit through which they sought the sale deed dated 24.01.2006 to be declared null and void being a result of fraud etc. After sifting the evidence led by the parties and hearing their respective learned counsels the Civil Judge (Junior Division), Kurukshetra (for short – 'the Trial Court') dismissed the petitioner's suit. The petitioner filed an appeal to challenge the judgment and decree passed by the Trial

Court. During the pendency of such appeal an application under Order 6 Rule 17 read with 151 of the Code was filed by the petitioner for amendment of the plaint to the effect that the sale deed which was the subject matter of challenge in the suit had been tampered with and material alteration in the same had been made. Thus, the same being fabricated was liable to be ignored. The Appellate Court dismissed the petitioner's application giving him a cause to knock the doors of this Court through the present petition.

According to learned counsel for the petitioner, the amendment application filed by the petitioner ought to have been allowed as the same was seeking only to clarify what was already on record and that the order of the Appellate Court was in violation of the provisions of Order 6 Rule 17 of the Code.

No merit is found in the submissions made by learned counsel for the petitioner.

Order 6 Rule 17 of the Code reads 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."

As per the afore-quoted provisions, the Court, at any stage of the proceedings, may allow either party to alter or amend their pleadings in such manner and on such terms as may be just and all such amendments shall be allowed by the Court as may be necessary for the purpose of determining the real questions in controversy between the parties. However, as per the proviso, no application for amendment is to be allowed after the commencement of the trial, unless the Court is convinced that in spite of due diligence, the party seeking the amendment could not raise the matter before the commencement of the trial.

The petitioner alongwith others had filed the suit for declaring the sale deed dated 24.01.2006 as null and void. Since the petitioner had challenged the aforesaid sale deed he was obviously aware of the contents thereof at the time of filing of the suit. Tampering, if any, on the sale deed would also had to be in his knowledge. Therefore, it was for him to raise this issue at the time of filing of the suit. What to talk of taking up of such issue at the commencement of the trial, the petitioner did not raise these issues even till the conclusion of the proceedings before the Trial Court as it was only at the appellate stage that these issues were sought to be raised through an amendment. That being so, in view of the proviso to Order 6 Rule 17 of the Code, the sought amendment cannot be allowed at the appellate stage especially when the Trial Court had dismissed the petitioner's suit after specifically holding therein that no plea with regard to tampering of the sale deed had been raised before it. The relevant portion of the Trial Court judgment is extracted below:-

“So far as the arguments of the learned counsel for the plaintiffs to the effect that there is cutting on one of the sale deeds and it bears no

signatures of the Sub-Registrar, is concerned, in this regard, this Court is of the view that the this is not the ground of setting aside the sale deed in question and these allegations have also not been made in the plaint by the plaintiffs. Therefore, this arguments is beyond the pleadings.”

After the afore-quoted opinion expressed by the Trial Court the petitioner's amendment application was filed only to fill up the lacuna as pointed out by the Trial Court. The same cannot be permitted.

Dismissed.

(DEEPAK SIBAL)
JUDGE

July 20, 2018
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No