

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5276 of 2017

Date of Decision: May 02, 2018

Sweety

...Petitioner

Versus

Satyawan & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Kulvir Narwal, Advocate,
for the petitioner.

Mr.Saurabh Dalal, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order, whereby the application for amendment of the plaint in a suit for declaration with consequential relief of permanent injunction at the stage of framing the issues, has been declined.

Mr.Kulvir Narwal, learned counsel for the petitioner-plaintiff submitted that the petitioner-plaintiff instituted the suit (Annexure P-3) for declaration with consequential relief of permanent injunction on the premise that the release deed dated 12.7.2012 and relinquishment deed dated 20.9.2013 have no binding effect on the rights of the plaintiff as the same were result of fraud. However, due to inadvertence and clerical mistake, the same could not be incorporated. Paras 8A to 8H are required to be incorporated in the plaint, which are essential and necessary as it is explanatory in nature as per the ingredients of Order 6 Rule 2 & 4 of CPC, much less the other statutory provisions and in the absence of the same, suit may not likely to be dismissed as no harm would be caused to the

respondent-defendants as they would be able to rebut the same.

Mr.Saurabh Dalal, learned counsel for the respondent-defendants submitted that the aforementioned amendment was in the knowledge of the petitioner-plaintiff and could have been incorporated in the suit. The suit has, thus, been filed in due haste. The order under challenge is legal and justified. There is no compliance of the expression “exercise of due diligence” and, thus, urged for affirming the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Narwal. The amendment sought by incorporating Paras 8A to 8H, which have been extracted in the application (Annexure P-1) at pages 11 to 23 of the paper book, deal with the averment as to how the aforementioned documents are nullity and void. The amendment sought is in consonance with the provisions of Order 6 Rule 2 CPC. The Court remained oblivious of the fact that the suit was at the initial stage. Even the issues have not been framed. The other party should have been granted liberty to file the amended written statement and the amendment sought does not tantamount to changing the nature or withdrawing of the admission.

For the reasons stated above, the order under challenge is set-aside. The application for amendment is allowed. Petitioner is allowed to amend the suit in accordance with law.

Revision petition stands allowed.

May 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No