

(113) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5381 of 2018 (O&M)
Date of decision: 21.09.2018

Avtar Singh

.... Petitioner

Versus

Mukhtiar Singh and others

.... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ajay Pal Singh, Advocate for the petitioner.
Mr. Tajinder Pal Singh Makkar, Advocate for the respondents.

B.S. WALIA, J. (ORAL)

[1] Mr. Tajinder Pal Makkar, Advocate has put in appearance on behalf of the respondents and has filed memo of appearance. The same is taken on record.

[2] Prayer is for setting aside order dated 22.03.2018 (Annexure P-5) whereby application (Annexure P-3) filed by the petitioner seeking amendment of plaint was dismissed by the learned trial Court.

[3] Petitioner/plaintiff had filed a civil suit for permanent injunction by restraining the respondents/defendants from interfering in the peaceful possession of the petitioner/plaintiff over 'Gair Mumkin Garhas' under Khasra No.543/8 (0-2) shown in the map as WXYZ and 'Gair Mumkin Abadi' Plot measuring 17 Marlas $\frac{1}{2}$ share of 1 kanal 14 marlas under Khasra No.85//13 (1-14) shown in the map as ABCD and 85//13 area of Burj Sidhwan, Tehsil Malout, District Sri Muktsar Sahib as per copy of

Jamabandi for the year 2014-15 as also for restraining respondents/defendants from dispossessing the petitioner/plaintiff from his suit Garhas and plot illegally and forcibly.

[4] In paragraph No.1 of the plaint, the petitioner/plaintiff averred that he and his brother were exclusive owners in peaceful possession of suit Garhas i.e. Khasra No.543/8 (0-2) shown in *Aks Shijra* as WXYZ and were using the said Garhas to store their Roori/Manure since a long time. Despite having filed the aforementioned suit along with averments as referred to above of the petitioner/plaintiff and his brother being owners in exclusive possession and storing Roori on the aforementioned land since a long period of time, inadvertently in paragraph No.2 of the plaint it was mentioned that the defendants were storing Roori on the said land.

[5] Issues in the case have been framed. However, trial has not commenced as parties have not led any evidence till date. The application filed under Order 6 Rule 17 CPC for making the correction of typographical clerical omission to incorporate the word 'plaintiff' instead of word 'defendants' in paragraph No.2 of the plaint, was dismissed by the learned Civil Judge (Jr. Div.), Malout vide order dated 22.03.2018 on the ground that the claim of the petitioner/plaintiff was based upon possession and once the petitioner/plaintiff had pleaded that Roori was stored by the respondents/defendants on the Garhas in question, therefore, later on the petitioner/plaintiff could not be allowed to amend the plaint qua possession. Secondly, that there was absence of due diligence and thirdly that amendment could not be allowed after the commencement of the trial unless the Court came to the conclusion that in spite of due diligence, parties could not raise the matter before the commencement of the trial.

[6] I have considered the submissions of learned counsel for the parties.

[7] Admittedly, parties have not led any evidence till date, therefore, no prejudice can be said to have been caused to the respondent/defendant. I am supported in my aforesaid view by a decision of Hon'ble the Supreme Court in **Mohinder Kumar Mehra v. Roop Rani Mehra and others, 2018 (1) RCR (Civil) 501**. Relevant extract of the same is reproduced as under:-

“13. The Proviso to Order VI Rule 17 prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's cases was that in view of the fact that the parties led evidence on amended pleadings, the allowing the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since plaintiff led his evidence on amended pleadings also as claimed by him.

14. This Court in **Chander Kanta Bansal v. Rajinder Singh Anand, 2008 (2) RCR (Civil) 801; 2008 (3) Recent Apex Judgments (RAJ) 83 : (2008) 5 SCC 117** has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

“13. The entire object of the said amendment is to stall filing of applications for amend- ing a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other's case. It also helps in

checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

15. Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We thus are of the view that looking to the purpose and object of the Proviso, present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso.”

[8] Admittedly, the petitioner/plaintiff filed a civil suit by mentioning in the plaint that he and his brother are exclusive owners in possession of the suit land and are storing Roori on said land since long. The aforementioned averments are there not only in paragraph No.1 of the plaint but also in the head note as well as in the prayer clause of the plaint. It has been categorically mentioned that the petitioner/plaintiff and his brother are exclusive owners in possession of the suit land and are storing Roori on the same since a number of years. It is only in paragraph No.2 that inadvertently instead of mentioning that the plaintiff and his brother were storing Roori over the suit land, it has been mentioned that the defendants

[9] The case is at the initial stage. No evidence has been led till date, therefore, no prejudice will be caused to the respondent/defendant. Accordingly, in order to prevent multiplicity of litigation and with a view to do substantial justice, impugned order dated 22.03.2018 (Annexure P-5) passed by the learned Civil Judge (Jr. Div.) Malout is set aside subject to payment of costs of Rs.7,000/- and the application filed by the petitioner/plaintiff seeking amendment of plaint is allowed.

[10] Accordingly, Revision Petition is allowed as above with a direction to the learned trial Court to proceed with the matter in accordance with law.

(B.S. Walia)
Judge

21.09.2018
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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |