

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

CR No.5878 of 2017 (O&M)
Date of decision : 23.04.2018

Raj Kumar

...Petitioner

Versus

Shankar Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Bhargava, Advocate for the petitioner.

Mr. S.K. Jain, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is in the revision petition against the order passed by the learned trial Court dismissing the application filed under Order 6 Rule 17 CPC for amendment of the plaint on the ground that the trial of the case has made substantial progress as it is fixed for defendant's evidence. This is the second application filed, as earlier application for amendment of the plaint was allowed.

The plaintiff wants to amend para 1 of the plaint and in place of word "by him", he wants to replace it by "by Sh. Shiama Ram father of Suhara Ram". The second amendment sought is that after the words "partition of India", he should be allowed to add words "In fact Shiama Ram who was father of Suhara Ram died in West Pakistan and his ancestral house was succeeded by Suhara Ram".

A careful reading of the plaint would show that reference to the properties left by Shiama Ram in Pakistan has been mentioned in para 1 of the plaint. The amendment sought is only clarificatory in nature and is to specifically plead the fact so as to remove any vagueness/doubt.

Learned counsel for respondent No.1 has vehemently argued that earlier also the plaintiff had filed a suit and in that suit, similar application under Order 6 Rule 17 CPC was filed. The aforesaid application was dismissed. Thereafter, the plaintiff withdrew his suit with the permission to file fresh one. He thus submitted that once the plaintiff was in knowledge of all the facts and had withdrawn the earlier suit with the permission to file a fresh one, the plaintiff cannot be permitted to amend the plaint.

The amendment sought for, has been extracted above. In the considered opinion of this Court, such amendment are only resulting out of accidental omission/inadvertent error. Neither the nature of the suit is being changed nor substantive pleadings are being effected. The Rules of procedure are meant to advance delivery of justice and not to scuttle the same.

In view of what has been discussed above, the order under challenge is set aside.

Revision petition is allowed.

Amended plaint be filed within a period of one week. Defendants would be granted opportunity to file written statement to the amended plaint. Only the plaintiff would be permitted to be re-examined by the trial Court limited to the amendment allowed and the defendants would

be granted opportunity to cross-examine only to the limited extent. There would not be any de novo trial. The defendants would also be granted opportunity to lead counter evidence.

Learned counsel for the parties have undertaken that they would not seek unnecessary adjournments. Counsel for the respondents has pointed out that the defendants have concluded their oral evidence.

Keeping in view the aforesaid facts, the learned trial Court is directed to decide the suit within a period of four months from the date of receipt of certified copy of the order.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No