

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

Sr. No.127

C.R. No.6489 of 2018 (O&M)

Date of decision: 26.09.2018

Ramotar

....Petitioner

versus

Tika Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 04.09.2018 passed by the Civil Judge (Junior Division), Rewari (for short – 'the Trial Court') through which an application filed by the petitioner/plaintiff under Order 6 Rule 17 CPC for amendment of his plaint has been dismissed.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that way back in July 2013, Ram Singh (uncle of the petitioner), filed a suit seeking therein declaration to the effect that the revenue entries in the column of cultivating possession in the name of the contesting respondents/defendants were illegal on the ground that the respondents' ancestors had never been in possession of the suit property. On being put to notice, the contesting respondents, who were the contesting defendants in the suit appeared before the Trial Court and filed their responses denying the plaintiff's claim. The Trial Court framed issues and thereafter both the parties led their entire respective evidence. When the

matter was listed before the Trial Court for rebuttal evidence, if any, and final arguments, plaintiff-Ram Singh filed an application under Order 6 Rule 17 CPC seeking to amend his plaint. However, during the pendency of the application Ram Singh expired and on his death, the petitioner who was a performa defendant in the suit and having common interest in the suit property, stepped into the shoes of Ram Singh. Thereafter, the amendment application was dismissed by the Trial Court through order dated 04.09.2018 which order is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submitted that the Trial Court erred in dismissing the petitioner's amendment application as the petitioner was only seeking to clarify the averments made in the unamended plaint.

After considering the above submissions made on behalf of the petitioner, this Court finds no merit in the same.

Order 6 Rule 17 CPC, 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 provision, the Court may at any stage of the proceedings, 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 comes to the conclusion that in spite of due diligence, the party seeking the amendment could not have raised the issue as sought to be raised through the amendment before the commencement of the trial.

In the case in hand it was way back in July 2013, that the suit had been filed seeking therein a declaration to the effect that the the revenue entries in the column of cultivating possession in the name of the respondents/defendants were illegal on the ground that the ancestors of the respondents never had been in possession of the suit property as *Dholidaran*. Upon notice, the respondents, who were the defendants in the suit, appeared before the Trial Court and filed their respective written statements through which they disputed the claims set up by the plaintiff. The Trial Court framed issues on which both parties led their entire evidence. When the matter was listed for final arguments, the plaintiff filed an application under Order 6 Rule 17 CPC seeking therein to amend his plaint.

The amendment application was filed after nearly four and a half years of the filing of the suit. By that time both parties had led their entire evidence and since it is not disputed that the issues sought to be raised through the amendment application pertained to a period much prior

to the filing of the suit and were in the knowledge of the plaintiff/petitioner at least at the time when the suit was filed, this Court has no hesitation to hold that such amendment was sought in violation of the proviso to Order 6 Rule 17 CPC.

Even otherwise, the amendment application has been perused and when the same is compared to the original plaint, it is found that through the amendment the petitioner is virtually seeking to re-write the entire plaint and further seeking to plead through his amendment new facts which are not found in the original plaint. This cannot be permitted.

In view of the above, no error is found in the order of the Trial Court which is impugned in the present proceedings.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 26, 2018

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