

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

CR No.6965 of 2016
Date of Order: 30.01.2018

Joginder Pal

....Petitioner

Versus

Buta Ram and Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Joshi Advocate for the petitioner.

Mr. Navdeep Klair, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order dated 14.9.2016 whereby the application seeking amendment of the plaint in a suit for permanent injunction, restraining the defendants from dispossessing of the property in dispute marked as ABCD shown in red color in the site plan situated in abadi/red line of village Samrai, Tehsil Phillaur, District Jalandhar illegally, forcibly and also restraint from demolishing the khurlies of the plaintiff except in due course of law, has been dismissed.

Learned counsel for the petitioner has submitted that due to inadvertence, while giving description of the property, the petitioner-plaintiff had mentioned the house of Ram Chand on the southern side of the suit property whereas in fact towards the Southern side of suit property, there is house of Jagiro, sister of Ram Chand wife of Ram Lubhaya. The following amendment in the head note was sought:

“South: House of Jagiro sister of Ram Chand W/o Ram Lubhaya”.

It is contended that though as per the provisions of Order 6 Rule 17 CPC, an amendment can only be sought before framing of the issues but it is clarificatory as it will not prejudice the right of the other party. The court below has erroneously observed that the aforesaid amendment would tantamount to *de novo* trial. He submitted that his client would abide by the undertaking recorded before this Court vide order dated 20.10.2016 that he would not adduce any additional evidence, if permitted to amend the plaint.

Learned counsel for the respondents has supported the impugned order by submitting that the application for amendment was moved at a belated stage when the defendants had already been cross examined. It was an after-thought and the proposed amendment would change the nature of the case, which should not be permissible.

I have heard learned counsel for the parties and appraised the paper book. Amendment sought is mere clarificatory in nature as it would not prejudice the right of the defendants-respondents as the identity of the property is the core issue to be decided. A party cannot be refused just relief merely because of some mistake, negligence or inadvertence. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost. Since the present application for amendment was made at a belated stage, the other party may be compensated in terms of money.

Accordingly, without going into the merits of the case, the present petition is allowed subject to payment of costs of Rs.5000/- which

shall be condition precedent. It is made clear that the petitioner-plaintiff shall not lead any evidence in support of the proposed amendment.

January 30, 2018
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No