

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6771 of 2017(O&M)
Date of Decision: 26.09.2018

Shri Kishan

.....Petitioner

Versus

Ishwar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kartar S. Malik, Advocate
for the petitioner.

Mr. M.S. Kundu, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 07.09.2017 passed by Civil Judge (Junior Division), Gohana, vide which application under Order 6 Rule 17 CPC for amendment of plaint was rejected.

[2]. Plaintiff filed a suit for permanent injunction seeking to restrain defendants from interfering in the peaceful possession of the plaintiff over khasra No.391/1. Plaintiff alleged that during pendency of the suit, defendants have encroached upon khasra No.391/1 to the extent of 2 kanals 5 marlas.

[3]. An application was filed for appointment of Local Commissioner on 12.01.2016, which was allowed on the basis

of no objection shown by the defendants. The demarcation was conducted by the Local Commissioner and the defendants were found to have encroached upon an area of 2 kanals 5 marlas in khasra No.391/1 belonging to the plaintiff.

[4]. The proposed amendment to seek incorporation of plea of mandatory injunction has been declined solely on the basis of delay in moving the application.

[5]. It is a settled principle of law that delay itself is no ground to decline *bona fide* amendment. All *bona fide* amendments are to be allowed. The effect of such amendment is to be seen by the trial Court at the relevant stage.

[6]. Perusal of the written statement would show that defendants have not staked their claim viz-a-viz khasra No.391/1, rather they pleaded their ownership in respect of adjoining plot bearing khasra No.391/2.

[7]. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves to the Court to order amendment in the pleadings. The second part is imperative and enjoins the Court to allow all amendments which are necessary for real determination of the issue. Court must allow all *bona fide* amendments which are necessary for determination of real controversy between the parties. Reference can be made to

Ramchandra Sakharam Mahajan Vs. Damodar Trimbok

Tanksale (Dead) and others, (2007) 6 SCC 737 and Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647.

[8]. Since original suit is for permanent injunction, the proposed amendment on the ground that during pendency of the suit, defendants have encroached upon khasra No.391/1, cannot be said to be barred by any limitation.

[9]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 07.09.2017 passed by Civil Judge (Junior Division), Gohana is hereby set aside. Normal consequences to follow.

September 26, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No