

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

**CR No.8043 of 2016
Date of Decision: 25.05.2018**

Dalbir Kaur

.....Petitioner

Vs

Municipal Corp. Ludh. and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. S.S. Salar, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 01.09.2016 passed by Civil Judge (Junior Division), Ludhiana, whereby application filed by the petitioner under Order 6 Rule 17 CPC for amendment of plaint was rejected.

[2]. A suit for permanent injunction was filed by the petitioner, seeking to restrain the defendants from changing the ownership of the building and for other reliefs. Headnote of the suit reads as under:-

“Suit for permanent injunction restraining the

defendants No.1 and 2 from changing the ownership of the building No.B-XXXVII-2663, Street No.3, Guru Nanak Colony, Opp. Guru Nanak Engineering College, Gill Road, Ludhiana from the name of Sikandar Singh son of Shri Chanan Singh in favour of Rupinder Singh son of Shri Jasmail Singh on the basis of a decree purporting to be dated 22.01.2015 obtained from the Court of Ms. Harpreet Kaur Nafra, Civil Judge, Junior Division, Ludhiana it being illegal, void and sham obtained on the basis of forged and fabricated documents-will allege to be dated 06.03.2005.

and

Further suit for permanent injunction restraining the defendants No.3 and 4 from alienating by mortgage, sale, exchange, gift etc. the property on the basis of forged documents and collusive decree, which is illegal, void and sham.”

[3]. In order to appreciate, the prayer exactly made in the suit, it would be relevant to have a glance on the prayer clause itself. The prayer clause of the suit reads as under:-

“It is, therefore, prayed that a decree for permanent injunction restraining the defendants No.1 and 2 from changing the ownership of the building No.B-XXXVII-2663, Street No.3, Guru Nanak Colony, Opp. Guru Nanak Engineering College, Gill Road, Ludhiana from the name of Sikander Singh son of Shri Chanan Singh in favour of Rupinder Singh son of Shri Jasmail Singh on the basis of a decree purporting to be dated 22.01.2015 obtained from the Court of Ms. Harpreet

Kaur Nafra, Civil Judge, Junior Division, Ludhiana it being illegal, void and sham obtained on the basis of forged and fabricated documents-will allege to be dated 06.03.2005 and further suit for permanent injunction restraining the defendants No.3 and 4 from alienating by mortgage, sale, exchange, gift etc. the property on the basis of forged documents and collusive decree, which is illegal, void and sham, be passed in favour of the plaintiffs against the defendants with costs. Any other relief to which the plaintiffs may be found entitled to in law and equity may also be granted.”

[4]. Perusal of the aforesaid prayer clause would show that the earlier part of the prayer was in the context of declaring the decree dated 22.01.2015 to be illegal, void and sham transaction obtained on the basis of forged and fabricated documents. Second part of the prayer was in the context of permanent injunction, seeking to restrain defendants No.3 and 4 from changing or creating encumbrance over the suit property.

[5]. Learned counsel for the petitioner submitted that in fact earlier a suit for specific performance was filed against defendant No.3. During pendency of the said suit, respondent No.4 Rupinder Singh filed an application under Order 1 Rule 10 CPC on the strength of Civil Court Decree dated 22.01.2015. The said application was dismissed on 23.09.2015. On coming to know about the factum of Civil Court Decree dated 22.1.2015,

petitioner instantly, filed present suit for permanent injunction on 17.04.2015 with the aforesaid background.

[6]. The suit for specific performance filed by the petitioner was ultimately decided for alternative relief of recovery. In fact, specific performance was declined on the basis of title having passed over to respondent No.4 on the basis of Civil Court Decree dated 22.01.2015. The present suit is at the initial stage, where the amendment was sought in the title and prayer clause of the suit on the ground that in fact real intention of the plaintiff was to seek declaration qua the decree dated 22.01.2015 for which necessary pleadings have already been made in the body of the plaint, but some how, prayer clause was defective inasmuch as that first part of the prayer should have been made on the declaratory notion. The second part of the prayer is suggestive of the fact that the first part was relating to the relief of declaration wherein Civil Court Decree dated 22.01.2015 was sought to be annulled being illegal, void and sham obtained on the basis of forged and fabricated documents.

[7]. An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties. Order 6 Rule 17 CPC is in two parts. First part is discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court

to allow all amendments which are necessary for determining real issue between the parties. All just and *bona fide* amendments should be allowed. At the most, opposite party can be compensated in terms of cost. The whole object and purpose of the provision is to avoid multiplicity of litigation, however, no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

[8]. Having considered the issue, I am of the view that omission to mention suit for declaration in the headnote and prayer clause of the suit is on account of omission which would not debar the petitioner from claiming amendment, particularly when the suit is itself at the initial stage.

[9]. In **Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481** and **Revajeetu Builders and Developers Vs. Narayanaswami and Sons and others, 2010(1) RCR (Civil) 27**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and

complete justice to the parties and it should be allowed if the same subserves the cause of justice and avoids further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that in spite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that in spite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation.

[10]. At the time of issuance of notice of motion, following order was passed on 30.11.2016:-

“Notice of motion to respondents No.3 and 4 for 23.01.2017 subject to payment of Rs.10,000/- as litigation expenses to be remitted to the said respondents. Same be deposited in the registry within one week from today.”

[11]. Learned counsel for the petitioner submitted that an amount of Rs.10,000/- towards litigation expenses was to be released to the respondent on deposit in the registry within time specified. Learned counsel submitted that amount has already been deposited.

[12]. Having considered the submissions made before this Court, I am of the view that amendment in question deserves to be allowed, however subject to payment of additional cost of Rs.15,000/- to be paid to the respondents in cash. An amount of Rs.10,000/- already deposited with the registry of this Court be released to the respondents on making an application by the respondents to that effect. The payment of cost to the tune of Rs.15,000/- shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

May 25, 2018.

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No