

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

C.R. No.8237 of 2017

Date of Decision.11.05.2018

Ram Kumar and others

.....Petitioners

Vs

Onkar and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.R. Sharma, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana for
for respondent No.5 and 6.

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AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is in revision petition against the impugned order whereby the application for seeking amendment of the plaint for correcting the clerical mistake to the effect that word 'owner' was mentioned in para No.1 and 3 of the plaint instead of 'cultivator' has been dismissed.

Mr. M.R. Sharma, learned counsel appearing on behalf of the petitioner submitted that the petitioner-plaintiff had filed the suit for declaration and consequential relief of permanent injunction against the defendants and arraying the Assistant Collector 2nd Grade and State of Haryana through District Collector/Deputy Commissioner as defendant No.5 and 6 on the premise that Chhajju son of Durga, father of the plaintiff and grandfather of plaintiffs No.2 to 4 and defendant No.1 to 4 was owner in actual physical possession of the agricultural land i.e. subject matter of the suit. Prior to the consolidation, the suit property was counted in bighas, biswas and

biswanis and after consolidation, the suit property was referred to in kanala and marlas. After the death of Chhajju, the property was required to be mutated in favour of three sons but the revenue officials illegally entered name of one son in the column of cultivation instead of three sons, though the plaintiffs were in physical cultivating possession of their 2/3rd respective shares. Cause of action accrued to file the suit when defendant No.1 to 4 in the year 2015 attempt to take forcible possession. Even application to the police was also moved. During the pendency of the application, an application under Order 6 Rule 17 CPC (Annexure P-3) was moved by stating as under:-

“2. That due to clerical mistake, the word “owner” was mentioned in para no.1, 3 of the plaint instead of “cultivator”, because parties to the suit are the Gair Mourusi and cultivator in the suit property. Hence, it is necessary to change the word “owner” as cultivator (gair mourusi) in para no.1 & 3 of the plaint.”

The aforementioned application was contested but the trial Court dismissed the application.

There is no representation on behalf of respondent No.1 to 4 despite service whereas respondent No.5 and 6 are represented by Mr. Rajbir Singh, AAG, Haryana.

This Court vide order dated 27.11.2017 had also directed the trial Court to defer the proceedings beyond the date given by this Court. The amendment sought is most innocuous in nature and do not alter the nature of the suit as it is purely inadvertent and clerical.

Mr. Rajbir Singh, AAG, Haryana, learned counsel appearing on behalf of respondent No.5 and 6 submitted that the petitioners-plaintiffs have not been able to bring the case within the realm of Order 6 Rule 17 CPC i.e. expression “despite due diligence” and rightly so, the amendment has been rejected, thus, urges this Court for dismissal of the petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sharma, for, the amendments extracted above is purely innocuous in nature and mere correction of error, which should have been allowed as the plaintiffs would have suffered at the final stage as evidence, for, it would have been beyond pleadings. Such type of litigation should not be thrown out by the trial Court rather decision should have been pragmatic and reasonable. No harm or prejudice would be caused to the respondents-defendants as they will be permitted to file amended written statement as all the aforementioned pleadings are subject to documentary evidence.

In view of the aforementioned, the order under challenge is set aside and the revision petition is allowed.

(AMIT RAWAL)
JUDGE

May 11, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No