

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8466 of 2017 (O&M)

Date of decision:10.05.2018

Amar Singh

... Petitioner

Vs.

Ganda Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sardavinder Singh, Advocate
for the petitioner.

Mr. Nitin Thatai, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 10.11.2017 (Annexure P-1) passed by Civil Judge (Senior Division), Payal, District Ludhiana, whereby, the application submitted by the petitioner-plaintiff for amendment of the plaint in a suit for permanent injunction seeking restraint order from interfering into joint use of electric power connection bearing A/c no.N-213 for the purpose of irrigating the share of plaintiff in respect of suit land, has been dismissed.

Mr. Sardavinder Singh, learned counsel for the petitioner-plaintiff submits that the suit aforementioned was filed by the plaintiff. However, due to inadvertence, illiteracy of applicant/petitioner could not explain certain facts to his counsel, wherein certain error crept into the pleadings which was sought to be rectified by amendment in para 2 of the

plaint at the stage when the suit was slated for petitioner-plaintiff's evidence. The application was contested by the defendants by raising all the preliminary objections. The trial Court has erroneously dismissed the application, for, it does not alter the nature of the suit or withdrawal of the admission which would seriously prejudice the right of the defendant and thus, urged this Court for setting aside the order under challenge.

Per contra, Mr. Nitin Thatai, learned counsel for respondent No.1 submitted that the order under challenge is perfectly legal and justified as the amendment sought to be incorporated would completely change the cause of action which cannot be permitted and rightly so the application has been dismissed. The petitioner-plaintiff was aware of aforementioned fact and therefore, no explanation has come forth in explaining the expression "despite exercise of due diligence" thus, urged this Court for dismissal of the petition by affirming the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

The amendment sought to be incorporated in the plaint is that earlier the plaintiff has stated that he had received the property in dispute after the death of his father Gurdial Singh by way of mutation, whereas, by way of amendment he wanted to say that the petitioner and his brothers had received the property from "brother of grandfather". The aforementioned amendment, in my view, is most innocuous and clarificatory in nature, much less does not amount to change the cause of action as observed by the trial Court, for, defendants would be at liberty to take all the preliminary

objections in the written statement qua maintainability and other points. In my view, the order under challenge suffers from illegality and perversity, much less fallacious and is not sustainable in the eyes of law. The same is hereby set aside. The revision petition stands allowed subject to costs of Rs.5000/- which shall be a condition precedent. The petitioner is at liberty to file the amended plaint within a period of 15 days from the date of receipt of certified copy of this order, if not filed alongwith application and thereafter, another 15 days to file the amended written statement and replication, if any. The trial shall commence from the stage it was slated for.

(AMIT RAWAL)
JUDGE

May 10, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No