

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

Sr. No.240

CR No.1929 of 2018
Date of decision: 19.09.2019

Dushyant Bansal

....Petitioner

versus

Abhinandan Jain and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Ashok Giri, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 13.11.2017 passed by the Additional Civil Judge (Senior Division) Jalandhar (for short – the Trial Court) through which an application filed by the petitioner seeking therein amendment of the plaint has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein possession of land measuring 4 marlas detailed and described in the head note of the plaint (for short – the suit property). Interim injunction to restrain the respondents, who were defendants in the suit, from transferring the suit property to any other person or handing over possession of the same as also from raising construction or changing the nature of the suit property was also sought. On being put to notice, the

respondents appeared before the Trial Court and disputed the petitioner's claim. The Trial Court framed issues after which the petitioner filed an application under Order 6 Rule 17 CPC to add the following averments in the end of the para No.6 of the plaint:-

“It is pertinent to mention here that the Mutation No.31026 has been entered in the column of “KASHTKAR” (Possession only) and not in the column of “Ownership”, as such, no ownership right is conferred upon defendants on the basis of this mutation. The law is well settled that a person cannot pass better title than he himself had. This clearly shows that no ownership rights were ever passed on to defendants through the alleged sale deed dated 25.10.2012 document No.9165, nor it could be as the vendors himself were not having any ownership rights.”

It was submitted that the afore-quoted averments had inadvertently not made in the originally filed plaint and since the suit was at the early stages, the same be permitted. The Trial Court dismissed the petitioner's application on the ground that after framing of issues, the Trial had commenced and that the petitioner was aware of the averments which were sought to be incorporated through the amendment, at the time of filing of the suit, and, therefore, should have pleaded the same at that time. Such order of the Trial Court is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

It is not disputed that at the time when the petitioner had filed his application for amendment no evidence had been led by the parties. A perusal of the record further reveals that the amendment sought by the petitioner pertains to description of the mutation entry No.31026, reference to which had already been made in para No.6 of his originally filed plaint.

In view of the above, it is found that the petitioner is only seeking to clarify a fact already averred in the originally filed plaint and at a stage in the suit when neither party has even begun to lead their evidence. Thus, in the interest of justice, it would be appropriate to permit the petitioner to amend his plaint. Accordingly, subject to payment of ₹5000/- as costs to be paid by the petitioner to respondents No.1 and 2, the impugned order is set aside and the sought amendment by the petitioner is permitted.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 19, 2019
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No