

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

**C.R. No.3070 of 2017 (O&M)
Date of Decision.16.01.2019**

Palwinder Singh

...Petitioner

Vs

Harjinder Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. K.S. Rekhi, Advocate
for the respondents No.1 and 3.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed at the instance of the petitioner-plaintiff against the impugned order dated 15.9.2016 (Annexure P-5) whereby application of the petitioner under Order 6 Rule 17 CPC for amendment of the plaint has been declined.

Mr. Sandhir, learned counsel appearing on behalf of the petitioner submitted that petitioner-plaintiff filed the suit for declaration that he has 1/4th share in the estate of deceased Harbans Singh son of Sohan Singh qua land measuring 137 kanals 16 marlas by laying challenge to the Will dated 15.08.1981.

The defendants contested the suit and raised objections qua non-impleadment of necessary parties.

The petitioner-plaintiff in order to avoid any technicality submitted applications for impleadment of necessary parties and amendment of the plaint qua suit land being ancestral and other corrections vide Annexures P-3.

The trial Court after consideration of the applications, allowed the application regarding impleadment of the parties, however, prayer for amendment was declined vide impugned order.

Mr. Sandhir submitted that once the application for impleadment of affected parties has already been allowed, the amendment as reflected in the application (Annexure P-3) ought to have been allowed as the same is essential and necessary for adjudication of the suit. The suit is at initial stage, therefore, no harm and prejudice would be caused to the opposite party as they would have opportunity to rebut the same.

Mr. Rekhi, learned counsel appearing for respondents No.1 and 3 opposed the prayer for amendment and submitted that plaintiff could have been vigilant and diligent in incorporating the amendment before filing of the suit. The suit cannot proceed on the basis of amendment sought in view of objection taken in the written statement as there would be no end to it, thus, urges this Court for dismissal of revision petition by upholding the order under challenge.

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. Sandhir. It would be apt to reproduce the proposed amendment sought to be incorporated in the suit claiming declaration of 1/4th share and the same reads as under:-

“3. That the applicant/plaintiff wants to amend the head note of the plaint in line No.14 after the words, year 1980-81, “and year 2010-11” and also in the prayer clause, last unnumbered para page No.5 in line

No.2 after the words, year 1980-81 by inserting, “and year 2010-11”.

4. That the plaintiff wants to add in para No.2 in line No.5 after the word, the defendants, “No.1 to 3”. Similarly, the plaintiff wants to add, “No.1 to 3” in para No.3 line No.3 after the words, the defendants, and in line No.5 after the word, defendant. Similarly the applicant/plaintiff wants to add the words “No.1 to 3” in para No.4 line No.4 after the word, the defendants. Similarly, the defendants wants to add the words, “No.1 to 3” in para No.6 line No.2 after the word, the defendants, and also in line No.6 after the words, the defendants.

5. That the applicant/plaintiff wants to amend para No.5 of the plaint in line No.3 after the words, his share by inserting the words, “The suit land is also an ancestral and coparcener property of the plaintiff and defendants No.1 to 3 and the plaintiff has got right by birth in the suit land and the alleged Will dated 15.08.1981 is not binding on the legal rights of the plaintiff.

6. That the applicant/plaintiff also wants to add para No.9-A, “That the plaintiff is not seeking any relief against the defendant No.4 to 19. They have been impleaded as defendants just to avoid any technicalities.”

The aforementioned amendment, in my view, does not amount to change of cause of action or mutual destructive pleas but explanatory in nature, for, unless and until the plaintiff does not establish the nature of the property, he may not be having any relief. The trial Court did not notice aforementioned fact. The aforementioned amendment cannot be treated to be a sermon unless and until the plaintiff leads evidence in support of aforementioned pleadings, which can be rebutted by the defendants in cross-examination and by filing amended written statement. The amendment sought is most innocuous as there is no alteration of nature of relief sought.

In view of the aforementioned circumstances, the impugned order is set aside and the application for amendment of the plaint is allowed, subject to payment of costs of ₹5000/-, which shall be condition precedent. In case the costs imposed is not paid, the order under challenge shall stand restored.

The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

January 16, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No