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

**Civil Revision No.4943 of 2017  
Date of Decision: 24.01.2019**

**JHALMAN SINGH**

**.....Petitioner**

**Vs**

**TARSEM LAL AND ORS**

**....Respondents**

**CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Deepak Verma, Advocate  
for the petitioner.

Mr. Parvinder Singh, Advocate for  
Mr. Manpreet Singh, Advocate  
for respondents No.1 and 2.

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**RAJ MOHAN SINGH, J. (Oral)**

[1]. Petitioner has challenged the order dated 01.07.2017 passed by the Civil Judge (Jr. Divn.) Garhshankar vide which application under Order 6 Rule 17 CPC filed by the plaintiff for amendment of the suit was dismissed.

[2]. Plaintiff filed a suit for possession by way of partition to his 1/24<sup>th</sup> share in a joint property marked by letters 'ABCDEF' shown in red colour in the site plan. Para Nos.1 and 5 of the plaint reads as under:-

*“1. That the plaintiff is owner in joint possession of the property marked as ABCDEF shown red and yellow in colour in the attached site plan measuring 4 Kanal 16 Marlas bearing*

*Khata No. and Khasra number as fully detailed in the head note of the plaint as per Jamabandi for the year 2009-10 situated in the area of village Binewal, Tehsil Garshankar, District Hoshiarpur and the same has not been partitioned by metes and bounds. The plaintiff has constructed a small room as shown in the site plan. Tarsem Lal defendant and other defendants have also raised constructions in the property in dispute, but the defendants are not allowing to measure their constructions. Thus the plaintiff will get the measurement by appointing Local Commissioner through the Court. The site showing yellow in colour is the private passage of the plaintiff. Copy of Jamabandi, Aks Shajra and site plan are attached with the plaint.*

5. *That a passage marked as GIJK shown yellow in colour as depicted in the attached site plan is a private passage connected to the site in possession of plaintiff. The defendant Nos.4 and 14 are threatening that they will create obstructions in the site of passage illegally and forcibly by raising construction therein, to which they have no right. In case defendant Nos.4 and 14 succeed in their illegal motive then the plaintiff would suffer an irreparable loss and injury which cannot be compensated in any manner. Thus the plaintiff is also entitled to the decree for permanent injunction as fully detailed in the head note of the plaint.”*

[3]. Plaintiff has staked his claim qua the path/passage shown in yellow colour in the site plan which he claimed to be a private path/passage leading to his property shown in the green colour in the site plan.

[4]. The proposed amendment is to the following effect:-

“(i) *That the plaintiff seeks amendment by deleting the words, 'creating any kind of obstruction in the passage' in second line of third headnote of the plaint and instead of it, he*

wants to add, interfering in the exclusive possession of the plaintiff over the site.'

(ii) That the plaintiff seeks amendment in third headnote of the plaint by adding words, LMN after words, GIJK in third line of the said headnote of the plaint after the words, 'as' and before word, 'shown' and further seeks to add words, 'green' after words, yellow and before word, 'in' in third line of headnote of the plaint.

(iii) That the plaintiff may be allowed to write word, 'with this application' after words, site plan in third line of third headnote of the plaint.

(iv) That the plaintiff may be allowed to amend para No.1 of the plaint by adding words, 'and green marked with letters GIJKLMN' in thirteenth line after word, 'yellow' and before word, 'in' and may be allowed to delete the words, 'the private passage of line no.13 and 14 and instead of it, the plaintiff may be allowed to write words, 'in exclusive possession'.

(v) That the plaintiff may be allowed to amend para No.5 of the plaint by adding words, 'and are threatening to interfere in exclusive possession of the plaintiff over the site GIJKLMN, 'after word. 'right' and before word, 'in'.

(vi) That the plaintiff may be allowed to amend the prayer clause as per third headnote of the plaint."

[5]. The trial Court dismissed the application for amendment of the plaint vide the impugned order, even despite observing that the suit was at initial stage i.e. for the service of remaining defendants, but in the same breadth it was observed that the application was filed by the plaintiff at a belated stage.

[6]. While issuing notice of motion on 01.08.2017, following order was passed by the Co-ordinate Bench of this Court:-

*“Learned counsel for the petitioner submits that petitioner is seeking amendment in the plaint (Annexure P-1), wherein, he specifically stated in paragraph-5 that passage marked as GIJK shown yellow in colour as depicted in the attached site plan is a private passage connected to the site in possession of plaintiff/petitioner. He further submits that amendment sought is essential and necessary to be pleaded in the suit as neither petitioner/plaintiff is claiming anything beyond his share over the suit property or record of the case, nor creating any hindrance to other co-sharer.*

*Notice of motion for 24.11.2017 qua respondents No.4 and 14.*

[7]. During the intervening period, two of the plaintiff's witnesses have been examined. By way of proposed amendment, the plaintiff seeks to restrain the defendants from interfering in his exclusive possession over the site in question. In the original plaint, plaintiff pleaded that he has constructed a small room in the site. Defendants have also constructed their respective portion. Path/passage marked by letters 'GIJK' was pleaded to be private passage of the plaintiff.

[8]. In my considered opinion, the proposed amendment is just an elaboration of facts. No new plea is sought to be added except to elaborate the grounds on which restraint is sought against the defendants.

[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 has 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. 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 inspite 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 inspite 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

[10]. Evidently, as per concluding part of the impugned order, the application in question was filed at the initial stage of

service of remaining defendants. The application cannot be termed to be belated, though two of the plaintiff's witnesses have been examined during the intervening period.

[11]. In view of aforesaid, I deem it appropriate to grant permission to amend the plaint. Consequently the impugned order dated 01.07.2017 passed by the Civil Judge (Jr. Divn.) Garhshankar is set aside. This revision petition is allowed, however subject to payment of costs of Rs.15,000/- to be paid to respondents No.1 and 2 in equal proportion.

[12]. The payment of costs shall be the condition precedent for grating indulgence by the trial Court in the aforesaid context.

January 24, 2019

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No