

CR-5979-2015 (O&M)

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

**CR-5979-2015 (O&M)
Date of decision : 16.01.2019**

Parmeshwari

... Petitioner

Versus

Mahabir Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jitender Singh Kundu, Advocate for
Mr. Ram Avtar Yadav, Advocate for the petitioner.

Ms. Sunita Nambiar, Advocate for respondent No.2.

Mr. Sanjay Verma, Advocate for respondent No.3.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 11.08.2015, whereby at the stage of the plaintiff's evidence, an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint by incorporating the relief of fraud and misrepresentation as per the provisions of Order 6 Rule 4 of CPC, has been dismissed.

It is contended by the learned counsel for the petitioner that the plaintiff filed the suit challenging the decree dated 13.11.1986 passed in Civil Suit No.846 of 1986 as well as mutation dated 30.04.1987 on the grounds stated therein. However, on engagement of the counsel, it realized that certain grounds of misrepresentation and fraud were also available, therefore, a cause of action accrued to seek the amendment, but the trial Court has erroneously dismissed the application as issues have already been framed. The aforementioned amendment is essential and necessary for the

CR-5979-2015 (O&M)

adjudication of the *lis* as the other party can be permitted to rebut the same by filing amended written statement as well as through evidence.

Learned counsel for the respondents submitted that the amendment sought to be incorporated would change the nature of the suit and tantamounts to withdrawing of admission and it seriously prejudices the right of the defendant and rightly so, has been declined, thus, urges this Court for dismissal of the present revision 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. Kundu, for, concededly, the challenge in the suit is to the judgment and decree *ibid*. The amendment sought to be incorporated is only the plea of fraud and misrepresentation. No doubt the issues have been framed, but it would cause a miscarriage of justice, in case, the plaintiff is not given a chance as the evidence contemplated would be without pleadings. No harm and prejudice would be caused as the defendant would file the amended written statement and rebut the same, in accordance with law and it would be a question of adjudication, at the final stage.

Keeping in view the aforementioned facts, the impugned order, under challenge, suffers from illegality and perversity, much less, without jurisdiction. The same is hereby set aside and the revision petition stands allowed, subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

16.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No