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

**Civil Revision No.5671 of 2018 (O&M)
Date of Decision: 22.11.2019**

DIWAN SINGH KHAIRAPetitioner
Vs
SARWAN SINGHRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. A.S. Gill, Advocate
for the petitioner.

Mr. D.K. Bhatti, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 07.08.2018 passed by the Civil Judge (Jr. Divn.) Nakodar, vide which the application filed by the plaintiff/petitioner under Order 6 Rule 17 CPC for rejection of the plaint was dismissed.

[2]. Vide the civil court decree dated 25.03.1995, 13 Kanals 10 Marlas of land along with other properties in different chunks came to the share of the plaintiff. At the time of filing of the present suit, the site plan adduced in the said suit has been attached as Annexure P-3. Somehow at the time of filing of the suit, the description of the land arising out of decree dated 25.03.1995 could not be mentioned and the plaintiff relied upon a site plan which has been attached as Annexure P-4.

[3]. In the written statement filed by the defendant, the site plan has been objected on the ground that the plaintiff has not come to the Court with clean hands and a wrong site plan has been attached without mentioning the measurements of the sides. The defendant has also given dimensions of the property according to his version.

[4]. Plaintiff filed the application seeking amendment in the plaint by showing the proposed amendment in the headnote of the first line after the word '33' wherein the plaintiff sought to incorporate following words:-

“from the taur measuring 13 Kanal 10 Marlas on north side.”

[5]. The civil court decree dated 25.03.1995 is already on record. In addition to the aforesaid, the plaintiff sought amendment in para No.4 of the plaint to incorporate an elaboration of facts which have already been pleaded in the original suit. The proposed site plan on which the plaintiff wishes to rely upon has already been attached with the revision petition as Annexure P-10. Comparison of Annexure P-3 and Annexure P-10 would make it clear that the properties are more or less equally placed in terms of configurations and dimensions. In *chak* No.3, there is enclosure shown with read colour to which plaintiff stakes his claim.

[6]. In view of written statement filed by the defendant, even

the proposed site plan is denied. The assertion and denial by the parties would give rise to triable issues.

[7]. Learned counsel for the petitioner submitted that the proposed amendment can be answered on the basis of pleadings of the parties as both the parties knew the case of each other.

[8]. The amendment in the pleadings is to be liberally construed so as to consider the real controversy between the parties and to pronounce the decision more satisfactorily. The proviso to rule to some extent curtails the absolute discretion of the Court to allow the amendment at any stage, however knowledge and diligence are considerations on which bona fide of a party has to be tested in order to prevent frivolous applications for amendment. The object of the rule is that the Court must try the merit of the case and allow all bona fide amendments which are necessary for just decision of the case.

Reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and Ors, (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[9]. Order 6 Rule 17 is in two parts. First part is the discretionary and leaves it to the Court to order amendment in the pleadings. Second part is imperative and enjoins the Court

to allow all amendments which are necessary for the determination of the real issue. The first condition for amendment is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of costs and or would deprive the opposite party for a valuable right which has accrued to him with the passage of time. The second condition is that the amendment should be perceived by the Court to be necessary for the purpose of real determination of the issue. All bona fide amendments are to be allowed which satisfies the aforesaid two conditions.

[10]. In the instant case, the plaintiff has reiterated the stand taken in the plaint. The objection taken by the defendant in the written statement is also not in consonance with the proposed amendment in any manner. In any case, the triable issues would arise for that both the parties would lead evidence on record. After framing of issues, the evidence of the plaintiff has not yet started.

[11]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) R.C.R. (Civil) 481**, the Hon'ble Apex Court has held that the power to allow amendment is wide enough to be exercised at any stage in the interest of justice. The purpose is to minimize the litigation. The original provision was deleted by Amendment Act 46 of 1999, however it was again restored by

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 raised the matter before commencement of trial. No such configuration exists in the present case as the trial of the case has not commenced so far.

[12]. For the reasons mentioned hereinabove, I deem it appropriate to grant indulgence in favour of the plaintiff to amend the plaint subject to payment of cost(s).

[13]. In view of above, the impugned order dated 07.08.2018 passed by the Civil Judge (Jr. Divn.) Nakodar, is set aside. This revision petition is allowed, subject to payment of of cost(s) of Rs.15,000/- to be paid to the defendant. Payment of costs shall be the condition precedent for allowing the aforesaid indulgence by the trial Court in the aforesaid context. Normal consequences to follow.

November 22, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No