

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

Sr. No.204

CR-8425-2016

Date of decision: 15.07.2019

Sadhu Ram

....Petitioner

versus

Jai Bhagwan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Inder Singh, Advocate for
Mr. Surya Parkash, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
for respondents No.2 to 11.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 04.10.2016 passed by the Civil Judge (Junior Division) Jind (for short – the Trial Court) through which an application filed by the petitioner under Order 6 Rule 17 CPC for 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, alongwith respondents No.15 to 18, filed a suit seeking therein partition of gair mumkin abadi land situated in the revenue estate of village Brahmanvas, Tehsil Julana, District Jind detailed and described in the head note of the plaint (for short – the suit property). The case set up by the petitioner, alongwith the other plaintiffs, was that they were co-owners of the suit property which had not been partitioned and therefore, they had filed the suit for its partition by metes and bounds as per their respective

shares.

On being put to notice, respondents No.1 to 14 appeared before the Trial Court and contested the petitioner/plaintiffs' suit. The Trial Court framed issues on the dispute between the parties and thereafter, the petitioner/plaintiffs produced one witness in support of their case. However, before his statement could be completed, an application was filed by the petitioner/plaintiffs under Order 6 Rule 17 CPC to amend their plaint to include therein another property which according to them was also jointly owned by the parties and had been inadvertently left out from the list of properties included in the suit filed by them. The contesting respondents filed a reply to the application through which they inter-alia denied that the property which was now sought to be introduced by the petitioner was jointly owned by the parties. Through order dated 04.10.2016, the Trial Court rejected the petitioner's application primarily on the ground of delay. Such order is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

In a partition suit filed by the petitioner/plaintiffs, through an application filed under Order 6 Rule 17 CPC, they seek to amend their suit to include therein a property which according to them is jointly owned by the parties. In a suit for partition, such an amendment is found necessary for determining the issue raised therein. Rather, without inclusion of all the properties jointly owned by the parties a partition suit would not be maintainable. Through the amendment sought by the petitioner/plaintiffs the basic nature of the suit would also not change. Such amendment has also been sought at an early stage of the suit i.e. even before the completion of examination of the plaintiffs' first witness.

In the light of the above, after setting aside the impugned order, the application filed by the petitioner under Order 6 Rule 17 CPC seeking therein amendment of his suit (Annexure P-2) is allowed. However, for the delay on the part of the petitioner/plaintiffs in the filing of such application, she is burdened with costs of Rs.10,000/- to be paid by the plaintiffs to the defendants in the suit, in equal shares.

Needless to add that the respondents will be granted an opportunity by the Trial Court to file their written statement to the amended plaint.

Since the petitioner's suit is pending since the year 2015, it is further directed that after grant of opportunity to the respondents to file their written statement and to the petitioner to file a rejoinder thereto, the Trial Court shall frame issues and then after granting to either side four-four effective opportunities to lead their evidence, finally dispose of the petitioner's suit within one year from the date next fixed before the Trial Court.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

July 15, 2019
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No