

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

**CR No. 8256 of 2017 (O&M)
Date of Decision:-11.12.2019**

Nitika Nirmal	Versus	...Petitioner
Rattan Singh and others		... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Navmohit Singh, Advocate
for the petitioner.

Mr. Ranjit Saini, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has assailed the order dated 13.09.2017 passed by Civil Judge (Jr. Divn.), Yamuna Nagar vide which application under Order 6 Rule 17 C.P.C. for amendment of plaint was dismissed.

Plaintiff sought to amend the pleadings at the initial stage when, even issues were not framed and only written statement was filed by the defendants. Defendant-Gaurav Kumar had already died but he was impleaded as defendant No.3. There are other defendants also Now the plaintiff seeks to amend the pleadings showing Gaurav Kumar to be dead and his legal representatives are sought to be impleaded in place of deceased-Gaurav Kumar. Second amendment is in the nature of necessary clarification viz-a-viz necessary typographical errors

which are sought to be removed by giving correct figure in the pleadings. Para B of the application relates to number of typographical errors which are required to be corrected at the initial stage. In para C, the plaintiff-petitioner seeks to incorporate the persons by the name of deceased in the pedigree table who have been pleaded to be dead in the pleadings in corresponding Para No.2 of the plaint. In Para D, name of one of defendant is sought to be pleaded in the necessary paragraphs whose name has been duly depicted in pedigree table.

On the aforesaid omission, the application in question was filed and the same has been rejected by the Civil Judge (Jr. Divn.), Jagadhri. At the time of dismissal of the application, the suit was at the initial stage where even issues were not framed after filing of the written statement. Notice of motion was issued on 13.12.2017 by passing the following order:-

"Learned counsel inter alia contends that the impugned order dismissing the application under Order 6 Rule 17 of the CPC is legally unsustainable since amendments sought were primarily to correct typographical errors, to clarify the stand taken in the plaint as also for impleading LRs of deceased-defendant No.3. Learned counsel further submits that the trial has yet to commence as issues have not been framed, therefore, the application ought not to have been dismissed.

Notice of motion for 17.01.2018."

During the course of arguments, it transpires that the

preliminary issue has already been framed and the same has been decided by holding that the land in question is an ancestral land.

It is a settled principle of law that all bona fide amendments are to be allowed.

An amendment in the pleadings is to be liberally construed so as to consider real controversy between the parties and to give verdict more satisfactorily. The proviso to the Rule to some extent curtails absolute discretion of the Court to allow amendment at any stage, however knowledge and diligence are the considerations on which *bona fides* of the 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 amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakham Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737 and Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647 .**

Order 6 Rule 17 CPC is in two parts. First part is 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 determining real issue between the parties. The first condition for the amendment

is that it should not be unjust and result in prejudice against the opposite party. It could not be compensated in terms of cost 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 is perceived to be necessary by the Court for the purposes of determining real issue between the parties. All amendments are to be allowed which satisfies the aforesaid two conditions. Amendment can be refused if such a prayer is barred by time or where the opposite party would suffer irreparable loss which could not be compensated in terms of cost. The Court can allow the amendment at any stage of proceedings for the purposes of determining real issues between the parties. The whole object and purpose of the provision is to avoid multiplicity of litigation, however no such amendment should be allowed which may result in material prejudice to the opposite party and is not capable of being compensated in terms of cost.

For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 13.09.2017 passed by Civil Judge (Sr. Divn.), Yamunanagar. This revision petition is accordingly allowed. Normal Consequences to follow.

11.12.2019

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Whether speaking /reasoned

Whether Reportable

**(Raj Mohan Singh)
Judge**

Yes / No

Yes / No