

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

CR-1437-2019

Date of decision:-26.9.2019

Swaran Dass

...Petitioner

Versus

Charan Dass and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.K. Choudhary, Advocate
for the petitioner.

Mr.Ritesh Pandey, Advocate
for the respondents.

H.S. MADAAN, J.

Under challenge in the present revision petition is order dated 15.2.2019 passed by Civil Judge(Jr.Divn.), Gurdaspur vide which, an application under Order 6 Rule 17 CPC filed by the plaintiff seeking amendment of the plaint had been dismissed.

Briefly stated, facts of the case are that plaintiff Swaran Dass had filed a suit against defendant Charan Dass and others seeking grant of permanent injunction restraining the defendants from interfering from for using the joint passage marked BEFXYZ and further restraining the defendants from dispossessing the plaintiff from house marked as AEDH along with mandatory injunction directing the defendants for removing the lentil/roof constructed over the passage marked EFX Y detailed in the head note of the plaint and gate/door from point E to Y shown in the site plan situated at village Pakhowal, Kullian, Tehsil and District Gurdaspur.

On notice, the defendants appeared and filed written statement contesting the suit. Issues on merits were framed. During the course of trial, the plaintiff had filed an application seeking amendment of the plaint contending that inadvertently in 14th line of the head note of the plaint, it has been wrongly mentioned that 'from point 'E to Y' instead of 'from point F to Y' and necessary correction in that regard is to be made in head note of the plaint and in the prayer clause.

The application was resisted by the defendants. The trial Court vide the impugned order dismissed the application observing that the application has been filed at a very belated stage when the case is fixed for arguments and amendment is not material.

Vide impugned order, the application was dismissed, leaving the plaintiff/respondent aggrieved.

Learned counsel for the revisionist/petitioner has contended that the amendment in question is essential for just decision of the case. The intention of the plaintiff is not to prolong the proceedings and if the amendment is allowed, he would not lead any further evidence.

Whereas this request is being opposed by learned counsel for the respondents/defendants.

Learned counsel for the revisionist has referred to citation **Tara V. Ganju and another Versus Basant and Co. and others, 2013(4)RCR(Civil)60** by the Hon'ble Apex Court wherein the amendment was allowed to avoid further multiplicity of litigation.

Whereas learned counsel for the respondents has referred to the case law titled **Vidyabai & Ors. Versus Padmalatha & Anr., 2009(1)**

RCR(Civil) 763 wherein it was observed that the Court can allow the amendment before commencement of the trial.

After hearing learned counsel for the parties and going through the record, I find that by way of proposed amendment in the plaint, the plaintiff only wants to carry out correction in the head note and prayer clause so as to replace letter 'E' by 'F' and as per statement of learned counsel for the revisionist, no further evidence is to be led.

For proper and final adjudication of the controversy between the parties and to avoid further multiplicity of litigation, the amendment deserves to be allowed. Therefore, the order under revision is set aside and application for amendment of plaint is allowed, subject to payment of cost of Rs.10,000/- . Out of that amount Rs.5,000/- is ordered to be deposited with District Legal Services Authority, Gurdaspur and remaining Rs.5,000/- is ordered to be paid to the defendants. Payment of cost shall be a condition precedent for permission to the plaintiff to amend the plaint. The defendants may be given an opportunity to file written statement to the amended plaint and then the Court may frame additional issue or re-frame the issues already framed, if need be. The defendants may be allowed to lead further evidence thereafter and then the suit be decided expeditiously preferably within a period of six months from the date of receipt of copy of the order.

With these observations, the revision petition is allowed accordingly.

26.9.2019

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

(H.S.MADAAN)
JUDGE