

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

Sr. No.113

CR-3024-2021 (O&M)

Date of decision : 30.11.2021

Raj Kumar (deceased) through His LRs

..... Petitioners

VERSUS

Hardev Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. B.S. Baath, Advocate, for the petitioners.

SUDHIR MITTAL, J. (Oral)

The petitioners are LRs of the plaintiff. A suit for declaration was filed claiming that the plaintiff was owner in possession of land measuring 0 (zero) kanal, 06 marlas as described in the plaint as well as land measuring 132 sq. ft. as described in the plaint and for injunction restraining the defendants from alienating the same in any manner and from interfering in the possession of the plaintiff. When the suit was fixed for final arguments, an application under Order 6 Rule 17 C.P.C was filed on behalf of the plaintiff seeking to amend Para No.4 of the plaint. The application has been rejected by the impugned order dated 28.09.2021 on the ground that amendment cannot be allowed after the trial has almost concluded. There was gross negligence on the part of the plaintiff. Earlier also, an application for amending the same para of the plaint had been filed and if, due diligence had been exercised, the second application could have been obviated.

Learned counsel for the petitioners submits that every application for amendment of the plaint, which enables the Court to determine the true controversy involved in the suit, should be allowed. He

others, 2012 (4) RCR (Civil) 481, Sajjan Kumar Vs. Ram Kishan 2005 (13) SCC 89 and Usha Devi Vs. Rijwan Ahamd and others, 2008 (1) RCR (Civil) 840.

The Code of Civil Procedure, 1908 has been amended to include a proviso that no amendment shall be allowed after the trial has commenced, unless, the Court comes to a conclusion that the amendment sought could not have been asked for earlier despite exercise of due diligence. In this case, the application for amendment has been filed at the stage when the suit was ripe for arguments. Para No.4 was amended earlier also, but at that time, the present amendment was not sought. Thus, the trial Court was justified in returning a finding that the plaintiff was guilty of negligence and lack of due diligence. This finding has not been shown to be wrong in any manner by learned counsel for the petitioners, nor has it been attacked by him. His only argument is that all necessary amendments must be allowed. Since, the plaintiff-petitioner was negligent in prosecuting his case, the argument cannot be accepted. Judgments relied upon are all distinguishable on facts. None of them states that an amendment should be allowed, even if, there is lack of diligence and is sought at the final stage of a suit.

In view of above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

30.11.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No