

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

145

CR-125-2022

Date of Order: 17.05.2022

KAMLESH AND ANOTHER

..Petitioners

Versus

NAR SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Kumar Garg, Advocate
for the petitioners.

Mr. Gurmail Singh, Advocate
for respondents.

ANIL KSHETARPAL, J(Oral)

The plaintiffs assail the correctness of the interlocutory order passed by the trial Court on 18.10.2021, while rejecting the prayer to amend the suit. The plaintiffs have filed a suit for grant of decree of declaration that they are owners to the extent of 1/9th share. All the parties to the suit are members of large joint family. During the pendency of the suit, the plaintiffs filed an application for permission to amend the plaint in order to incorporate the following amendments.

“2. As per the application, the following paras are to be added in the plaint:

i) in the 7th line of the head note, after the words “Jamabandi for the year 2009-2010” the following sentence is to be added:

“and for further declaration that release deed no. 359 dated 03.05.2015 and its Mutation No. 4291 dated 06.06.2018, in favour of defendant no. 2, are also illegal, null and void, collusive, not binding on the rights of the plaintiffs and liable to be set aside”.

ii) In addition, after para 5 of the plaint, the para 5A is to be added in the plaint, as under:

“5A. That the defendant no. 1 has executed the release deed no. 359 dated 03.05.2018 in favour of the defendant No. 2 regarding suit land without any right, title or interest and in absence of the plaintiffs just in collusion with him and to deprive the plaintiffs from their right. This release deed and its consequent Mutation No.

4291 attested on 06.06.2018 are illegal, null and void, collusive, not binding on the rights of the plaintiffs and liable to be set aside”.

iii) Then, in the prayer clause, in 6th line after the words “Jamabandi for the year 2009-2010’ the following sentence is to be added:

“and for further declaration that release deed no. 359 dated 03.05.2015 and its Mutation No. 4291 dated 06.06.2018, in favour of defendant no. 2, are also illegal, null and void, collusive, not binding on the rights of the plaintiffs and liable to be set aside”. It has been stated that the plaintiffs did not know about the aforesaid release deed and mutation, which they came to know only from the written statement.”

The learned trial Court has dismissed the application for amendment only on the ground that the trial has commenced.

It is not in dispute that after framing of the issues, the parties are yet to present their evidence in order to prove their side of the case. The foundation for seeking necessary relief has already been laid in the original plaint. In this particular case, certain facts which came to the notice of the plaintiffs on filing of the written statement by the defendants, have prompted the plaintiff to file this application. The Courts have been set up to do substantive justice between the parties while making effort to follow the procedure properly. In this case, defendants shall not suffer any irreparable loss if the plaintiffs are permitted to amend the plaint in order to bring not only the correct facts before the Court but also to seek the necessary relief.

In view thereof, the present petition is allowed, subject to the payment of cost of Rs.2,000/-.

All the pending miscellaneous applications, if any, are also disposed of.

May 17th, 2022

**(ANIL KSHETARPAL)
JUDGE**

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Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*