

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

**CR No.3673 of 2017 (O&M)
Date of decision: 31.08.2022**

Mohinder Pal Kaur

..... Petitioner

versus

Mala Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Rajan Bansal, Advocate
for the petitioner.

Mr. Davinder Kumar, Advocate
for respondent No.2.

Mr. Parveen Sharma, Advocate
for respondent No.3.

TRIBHUVAN DAHIYA J. (ORAL)

This revision petition has been filed by the petitioner-plaintiff under Article 227 of the Constitution of India for setting aside the order dated 24.08.2016 (Annexure P-5) passed by the trial Court dismissing her application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint.

2. As apparent from the facts of the case, the petitioner-plaintiff filed a suit for declaration to the effect that the registered sale deed dated 24.03.2011 executed by respondent-defendant No.1, in favour of respondent-defendant No.2, on the basis of alleged power of attorney of the petitioner-plaintiff dated 20.01.2011, with regard to the land in

question, as well as the alleged power of attorney in favour of defendant No.1 are illegal, null and void.

3. During pendency of the suit, the petitioner-plaintiff earlier filed two applications for amendment of the pleadings under Order 6 Rule 17 CPC. The first application was allowed by the trial Court vide order dated 24.07.2012 (Annexure P-8). The second application was also allowed by the trial Court vide order dated 04.04.2015 (Annexure P-9). Thereafter, the petitioner-plaintiff filed the third application dated 01.02.2016 (Annexure P-3), which is the subject matter of the present petition, on the ground that at the time of going through the case file it came to the notice of counsel for the petitioner-plaintiff that despite due diligence, the earlier counsel could not mention certain pleadings about fiduciary relations between her and Roshan Singh @ Roshan Lal, who had committed fraud with the petitioner-plaintiff in connivance with the respondents-defendants, though the fact had specifically been disclosed to the counsel by the plaintiff.

4. Provision of Order 6 Rule 17 CPC clearly stipulate that amendment of the pleadings is to be allowed when the amendment is necessary for the purpose of determination of real question in controversy between the parties. The proviso further provides that no application for amendment shall be allowed after the trial has commenced unless the Court concludes that despite due diligence, parties could not have raised the matter before the commencement of trial. In the third application for amendment dated 01.02.2016 (Annexure P-3) filed by the petitioner-

plaintiff, it is nowhere stated that the facts now sought to be pleaded were not within her knowledge. The reason given in the application is that due to inadvertence, the earlier counsel did not put forth complete version of the plaintiff in the plaint. This does not satisfy the requirements of Order 6 Rule 17 CPC. In fact, by filing the instant third application for amendment, as has been held by the trial Court also, a new version is being put forth by the petitioner-plaintiff to take the plea of fiduciary relationship. At this stage of trial, when all the witnesses have been examined and the case is fixed for final arguments, there is no ground to allow the third application for amendment filed by the petitioner-plaintiff. The impugned order passed by the trial Court dated 24.08.2016 (Annexure P-5) declining the application, therefore, calls for no interference.

5. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

31.08.2022

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