

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

Sr. No.256

CR No.5822 of 2017

Date of Decision: 29.10.2022

Paramjit Singh

.... Petitioner

Versus

Punjab Wakf Board, Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Hardeep Singh, Advocate
for the petitioner.

Mr. A.P.S.Sandhu, Advocate
for the respondent.

TRIBHUVAN DAHIYA, J.(ORAL)

This revision petition is filed under Article 227 of the Constitution of India for setting aside the order dated 31.07.2017 (Annexure P-1) passed by the lower appellate Court vide which respondent/plaintiff's application under Order VI Rule 17 of Code of Civil Procedure for amendment of the plaint has been allowed.

2. The facts of the case in brief are, the respondent/plaintiff filed a suit for possession of the property shown in site plan attached with the plaint, and for recovery of charges for illegal use and occupation of the said property measuring about 478 sq. yards situated at Samana, District Patiala.

The suit was dismissed by the trial Court by judgment and decree dated

19.08.2014 (Annexure P-4), holding that plaintiff failed to prove defendant's possession over *khasra* No.287 and that the suit property was a part of it. It was also held that so far as the question of possession was concerned, the plaintiff failed to prove on record any site plan of the 478 sq.yards property, marked as ABCDEA, alleged to be in possession of the defendant. In the head note of the plaint, no name of any person having the adjoining property or the nature of the adjoining property, had been mentioned. The trial Court further held, when the defendant had taken specific stand that property marked as ABCDEA did not fall in *khasra* No.287; instead, the suit property was part of *khasra* No.265, the plaintiff was required to prove that suit property formed part of *khasra* No.287.

3. It was after dismissal of the suit in question by the trial Court vide judgment and decree dated 19.08.2014, that the respondent/plaintiff filed the application in question seeking amendment of the plaint. The amendment was sought on the ground that boundaries of the suit property could not be explained properly due to oversight, and, therefore, amendment to the head note as well as prayer clause of the plaint was required to mention the details of the persons who owned the adjoining property, which would not change nature of the case.

4. The lower appellate Court by the impugned order dated 31.07.2017 allowed the said amendment in the plaint by holding that the persons, who were having property around the disputed property, were in the knowledge of the plaintiff at the time of filing of the suit and it had attached a site plan with the plaint. The amendment sought was, therefore, only explanatory which would help the Court arrive at a correct conclusion. It was held to be relevant and *bona fide* also.

5. Learned counsel for the parties have been heard and the paper book perused.

6. The provisions of Order VI Rule 17 of CPC specifically provide that amendment to pleadings is not to be allowed after the commencement of trial, unless the Court comes to conclusion that despite due diligence, the parties could not have raised the matter before the commencement of trial. In the instant case, the amendment has been sought only on the ground that the suit property could not be properly explained in plaint due to oversight and, therefore, the amendment is needed. It is not the pleaded case of respondent/plaintiff that despite due diligence, it could not have mentioned these facts in the plaint earlier or that the same were not to its knowledge. There was, therefore, no ground for the lower appellate Court to allow the amendment in a casual manner, merely on the asking of respondent/defendant in violation of explicit provisions of the Code.

7. There is another aspect of the matter also. The amendment is being sought after dismissal of the suit by the trial Court *inter alia* on the ground that plaintiff has been unable to prove that the property in question, mentioned as ABCDEA, falls in *khasra* No.287 as claimed by it while filing the suit. It has also been held by the trial Court that in the head note of plaint plaintiff has not even mentioned the name of any of the persons having the adjoining property or nature of the adjoining property. By way of the instant application for amendment of plaint, this is exactly what is sought to be mentioned therein, i.e., names of the persons having adjoining property. It is, therefore, a blatant attempt on the part of respondent/plaintiff to fill the lacuna in its suit, which cannot be permitted. Allowing such an amendment would only be a misuse of the provisions of Order VI Rule 17 of CPC.

8. In view of the aforesaid, it is apparent that lower appellate Court erroneously allowed the amendment by the impugned order dated 31.07.2017 (Annexure P-1), which cannot be sustained.

9. The revision petition is, accordingly, allowed and the order dated 31.07.2017 (Annexure P-1) passed by lower appellate Court is set aside.

(TRIBHUVAN DAHIYA)
JUDGE

29.10.2022
Maninder

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