

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

**CM-8128-C-2016 &
CM- 6295-C-2017 in
RSA-2688-1987**

Date of Decision: 01.09.2022

Khilanda Ram through LRs

.....Appellants

Versus

Ram Sahai and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.R.K. Sharma, Advocate for the applicants/appellants.

Mr.Sachin Mittal, Advocate for the respondents.

HARKESH MANUJA, J.

This order of mine shall dispose of two misc. applications bearing CM-6295-C-2017, seeking amendment of plaint and CM-8128-C-2016 for correction of decree sheet, filed at the instance of appellants/plaintiffs.

The facts leading to the present misc. applications are that the appellants herein through their predecessor-in-interest filed a suit for declaration, claiming themselves to be owner in possession of 35 kanals 2 marlas of land situated within the revenue estate of Village MaujaTaoru, Tehsil Nuh, District Gurgaon. The appellants also prayed for declaring the revenue entries in the name of respondents to be null and void as well as for restraining them from interfering in their possession. Though, in the plaint, total land was

mentioned as 35 kanals 2 marlas, however, while giving details of Khasra numbers, an inadvertent error happened and khasra No.38//21/1 (2-16) could not be mentioned therein. As per para 3 of the original plaint, the following land details were mentioned:-

“Khewat No.1095, Khatoni No. 1248, Rectangle No.39, Killa No.16 (3-9), 25 (2-12), Rectangle No.50, Killa No.5/1 (4-11), Khewat No.1096, Khatoni No.1250, Rectangle No.37, Killa No. 8 (6-16), 12/2 (7-0), 13/1 (3-8), 19/1 (4-0) total measuring 35 K 2 M”.

In the written statement, the respondents did not dispute the extent of total land in dispute to be 35 kanals 2 marlas though they raised the plea of adverse possession.

Learned trial Court vide judgment and decree dated 27.05.1986 decreed the suit, holding the plaintiff to be owner in possession of the suit land and also declared the revenue entries in the names of respondents to be illegal, null and void. The judgment and decree dated 27.05.1986 was challenged in appeal. Learned appellate Court vide judgment and decree dated 02.05.1987 accepted the appeal partially by holding the defendants-respondents to be owners of the suit property on the basis of adverse possession. It is the judgment and decree dated 02.05.1987 which came to be challenged before this Court by way of RSA No.2688 of 1987.

This Court vide judgment dated 30.03.2016 partly allowed the appeal filed by the present appellants by declaring them to be owner of the suit property and also recording that the mortgage

entries in the name of the respondents and their predecessor regarding suit land were illegal and thus, required to be deleted. Further liberty was granted in favour of appellants so as to avail their remedies to seek partition and possession of their share. Accordingly, decree was to be prepared by this Court, based on the judgment dated 30.03.2016.

It was thereafter, that the inadvertent and bonafide error came to the notice of the appellants regarding non-mentioning of Khasra No. 38//21/1 (2-16) in the plaint and accordingly CM-6294-C-2017 came to be filed before this Court seeking amendment of para 4 in the original plaint by including land falling in Rect. No.38 Killa No.21/1 by placing on record amended plaint as well. A comparative chart of para 4 of the original plaint as well as that of the amendment now sought is given hereunder:-

“ORIGINAL PLAINT	AMENDED PLAINT
<i>4. That consolidation took place in the village and one sixth share of agricultural land as mentioned in para no.1 and 2 of the plaint was given Khasra no. which is contained in khewat No.1095, Khatoni No.1248, Rect. No.39, killa No.16 (3-9), 25 (2-12), Rect. No.50, Killa No. 5/1 (4-11), khewat No.1096, Khatoni No.250, Rect. No.37, killa No. 8 (6-16), 12/2 (7-0), 13/1 (3-8), 19/1 (4-10), measuring in all 35 kanals 2 marlas situated within</i>	<i>4. That consolidation took place in the village and one sixth share of agricultural land as mentioned in para no.1 and 2 of the plaint was given Khasra no. which is contained in khewat No.1095, Khatoni No.1248, rectangle No.38, Killa No.21/1 (2-16), Rect. No.39, killa No.16 (3-9), 25 (2-12), Rect. No.50, Killa No. 5/1 (4-11), khewat No.1096, Khatoni No.250, Rect. No.37, killa No. 8 (6-16), 12/2 (7-0), 13/1 (3-8), 19/1 (4-10), measuring in all 35</i>

<i>the revenue estate of MaujaTaoru, Tehsil Nuh, Distt. Gurgaon. Copy of Jamabandi for the year 1978-79 is hereby attached with the plaint.</i>	<i>kanals 2 marlas situated within the revenue estate of MaujaTaoru, Tehsil Nuh, Distt. Gurgaon. Copy of Jamabandi for the year 1978-79 is hereby attached with the plaint.”</i>
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Further, based on the amendment sought, the appellants also prayed for correction of decree-sheet as its natural consequence for inclusion of Khasra No.38//21/1 (2-16) therein, by way of CM-8128-C-2016.

Though, notice of aforesaid two applications was issued on 15.05.2017 and 03.07.2018, respectively to the non-applicants/respondents, however, despite having been granted number of opportunities, no reply had been filed by the respondents.

Learned counsel for the applicants / appellants argues that the amendment sought in the plaint is on account of a bonafide mistake and Khasra No.38//.21/1 (2-16) came to be left out due to an inadvertent mistake at the time of drafting of the plaint. He further argues that no prejudice will be caused to the respondents if both the applications are allowed as there is no dispute between the parties regarding the total suit land being 35 kanals 6 marlas. He again submits that this clerical mistake in the plaint came to the notice of the appellants only when the certified copy of judgment and decree of this case was received.

On the other hand, learned counsel for the respondents argues that the applications for amendment of plaint as well as

decree-sheet at such a belated stage are not maintainable, however, he has not been able to controvert the factual aspect stated in the applications.

Heard learned counsel for both the parties and having gone through the records, as regards CM-6295-C-2017 vide which amendment of plaint so as to include Khasra No.38//21/1 (2-16) has been prayed for, I find merit in the same.

A careful perusal of para 4 at page 11 of the main paper-book of regular second appeal, from the judgment and decree dated 27.05.1986 rendered by the learned trial Court, it is apparent that the respondents filed their written statement admitting all the averments made by the predecessors-in-interest of the appellants regarding the details of the suit land except for raising the plea of adverse possession. Thus, there was no dispute between the parties that the *lis* was pertaining to 35 kanals 2 marlas of land, it was possibly this reason that no reply even to this application was filed by the respondents. Once there was no dispute between the parties that the subject matter of land was 35 kanals 2 marlas, non-inclusion of Khasra No. 38//21/1 (2-16) at best happened on account of a bonafide and inadvertent error while drafting the plaint. Once the extent of land has been correctly mentioned in the plaint which has not even been disputed by the other side, the inclusion of one khasra number so as to make it reconcile with the total land by way of an amendment even at this stage is not based on any new cause of action; thereby causing any disadvantage to the respondents.

It may be pointed out here that the wide power of the Court regarding amendment of pleadings is circumscribed by the factors vis-à-vis (i) the application has to be bonafide (ii) the same should not cause prejudice to the other side and (iii) it should not affect the rights already accrued to the opposite party.

In the facts and circumstances of the present case, it nowhere reflects that there was any malafide intention on the part of appellants while having missed out mentioning of omitted Killa No.38, Rect. No.21/1 (2-16) in the plaint. Neither the appellants derived any undue benefit on this account; nor any prejudice was caused to the respondents. In fact, this bonafide mistake appears to have been traced out only on a careful examination of their pleadings and the decree-sheet now. Therefore, application for amendment of the plaint as prayed for by the appellants needs to be allowed so as to decide the *lis* between the parties in a complete and effective manner and to bring an end to the long pending litigation between them.

Resultantly, once the amendment of plaint is allowed in favour of the appellants, as detailed hereinabove, the amendment of decree passed by this Court, in pursuance to the judgment dated 30.03.2016 remains to be merely consequential in nature. It is true that the appellants ought to have been diligent and prompt in seeking such an amendment of plaint at an early stage of litigation, however, the proposed amendment of plaint as well as decree for inclusion of one khasra number as part of the suit land being necessary for the purpose of deciding the rights *inter-se* parties, completely and

effectively needs to be allowed. It may otherwise be pointed out here that considering the rights of the parties to be supreme, the procedural law has to be applied to further their cause, to the extent possible rather than to create impediments based on hair-splitting technicalities unless the parties are not acting in a bonafide manner or are trying to unnecessarily delay the proceedings for ulterior motives.

In view of what has been stated hereinabove, both the applications are hereby allowed and the amendment in the plaint is permitted to be carried out as prayed for, followed by consequential amendment of decree.

September 01, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>