

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

Civil Revision No.1349 of 2020 (O&M)
DATE OF DECISION : 10.08.2022

Shamsher Singh

.....Petitioner

versus

Sajjan Kumar and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Babbar Bhan, Advocate for the petitioner

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ALKA SARIN, J. (Oral):

This is a civil revision petition under Article 227 of the Constitution of India challenging the order dated 14.01.2020 passed by the Additional Civil Judge (Senior Division), Charkhi Dadri whereby the application preferred by the plaintiff-petitioner under Order 6 Rule 17 CPC seeking amendment of the plaint has been dismissed. According to learned counsel, the Trial Court has erred in dismissing the said amendment application on illegal and erroneous grounds. It was also submitted that the amendment sought is necessary for the proper adjudication of the dispute.

The brief facts relevant to the present *lis* are that the original plaintiffs (Ramesh Kumar and Virender Singh) filed a civil suit seeking dissolution of partnership and for rendition of accounts and further for declaring the sale deed dated 24.06.2010 executed by Sajjan Kumar in favour of defendant Nos.2 to 6 as illegal, null and void. During the pendency of the suit, the present petitioner along with one Vinod Kumar filed an application under Order 1 Rule 10 CPC for being impleaded as plaintiffs. The said application was allowed and vide order dated 05.01.2016 the present petitioner and Vinod Kumar were added as plaintiffs. The said application for impleadment was filed when the evidence of the original plaintiffs was going on and in para 5 of the said application it was stated that the applicants i.e. the present petitioner and Vinod Kumar will adopt the plaint, written statement and evidence adduced by the plaintiffs. Thereafter, an application for leading additional evidence was filed by the present petitioner which was dismissed vide order dated 21.08.2017 which was challenged by the present petitioner in this Court by filing Civil Revision No.7282 of 2017 which civil revision also came to be dismissed on 23.10.2018. Subsequently, the present application was filed by the present petitioner on 07.08.2019 under Order 6 Rule 17 CPC for amendment of the plaint. It is apt to note that at the time when the present application was preferred the suit was fixed for rebuttal evidence. As of today, the case is fixed for final arguments.

The present petitioner had been impleaded as a co-plaintiff in the year 2016 and had made a specific statement that he would adopt the plaint, the written statement and the evidence adduced by the plaintiffs. Thereafter, no effort was made by the present petitioner at that point of time nor at a later stage to file any application for amendment. In fact, thereafter an application for additional evidence was filed which also came to be dismissed up to the High Court. Further, a perusal of the plaint reveals that earlier the stand taken in the plaint was that the plaintiffs and defendant No.1, namely, Sajjan Kumar had entered into a business partnership under the name and style of M/s Tirupati Stone Crusher, Village Pichopa Kalan, Charkhi Dadri, Bhiwani on 10.01.2006 under an oral agreement followed by an agreement in writing executed on 12.01.2009. By way of the present amendment, the present petitioner seeks to add the factum of a partnership deed dated 18.01.2006 which, according to the application, could not be mentioned due to inadvertence. The present petitioner had every opportunity to point this fact out at the time of being impleaded as a co-plaintiff. He, however, chose to keep quiet and rather suffered a statement that he adopts the plaint, the written statement and the evidence as led by the other co-plaintiffs. Permitting the amendment at this stage when the matter is fixed for final arguments would amount to a *de novo* trial which cannot be permitted in law. Even the Trial Court while passing the impugned order found that *“The proposed amendment has been sought by the applicant-plaintiff No.4 Shamsheer Singh at the stage of rebuttal evidence*

and if the same is allowed, it would amount to de novo trial of the present suit. It is settled proposition of law that any amendment in the pleadings which is not necessary for the just decision of the case should not be allowed as a matter of course and in application under order 6 Rule 17 CPC should be allowed only in those cases where interest of applicant suffers. In the instant case, the applicant/plaintiff No.4 has moved the instant application at a belated stage, in order to fulfill lacuna in his pleadings". Learned counsel has not been able to point out how the reasoning given by the Trial Court is erroneous or perverse.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the Trial Court. The civil revision petition is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.08.2022
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(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
