

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

CR No.3833 of 2022

Date of decision: 14th September, 2022

Jaipal @ Jaypal

... Petitioner

Versus

Wazir & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Satpal Bhasin and Mr. Raghav Goel, Advocates
for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning order dated 23.08.2022 (Annexure P5) passed by the Court of learned Civil Judge (Junior Division), Sonapat whereby an application under Order VI Rule 17 CPC for amendment of the plaint filed by the plaintiff/respondent No.1 was allowed.

Learned counsel, inter alia submits that the impugned order (Annexure P5) had been passed in utter disregard to the settled principles of law relating to amendment of pleadings. He submits that the trial Court failed to appreciate that all the facts which respondent No.1 was seeking to incorporate by way of the proposed amendment, were well within his knowledge much prior to filing of the suit and by way of the amendment, which had been allowed vide impugned order, the entire complexion of the suit had changed. It was submitted that all

the averments incorporated by way of amendment were false and fabricated. Still further, he submitted that respondent No.1 had moved an application for amendment of his plaint with an oblique motive to add a relief which on the face of it, was barred by limitation. The plaintiff claimed to have learnt about the sale deed in question after the demise of his mother, who had died in 2016 yet the suit had been filed 5 years later, in the year 2021. Learned counsel submits, that on face of it, the relief of declaration sought qua the sale deed is beyond limitation. He urged that the right course, if at all permissible, would have been to file a separate suit for declaration rather than to seek amendment of the plaint.

I have heard the learned counsel and perused the relevant material on record.

This Court does not find any force in the submissions made by learned counsel that the relief of declaration, which had been added by way of the amendment, was on the face of it barred by limitation.

Respondent No.1 has averred in his plaint “... .. *that when the plaintiff came to know the above mentioned sale deed and mutation, then he conveyed a panchayat of relatives and respectable persons of the society and in this panchyat the defendant No.1 admitted his fault and accepted that the said land i.e. 5 Kanal belongs to the plaintiff and executed an affidavit regarding that the said land measuring 5 Kanal belongs to the plaintiff and he will not claim any right over the suit land in future*”.

On a perusal of the entire plaint, emphasis on the above mentioned, it is amply clear that respondent No.1 has nowhere averred that he learnt about the sale deeds and mutations right after the death of his mother in the year 2016 as no specific date thereafter has been mentioned.

It would be a matter of trial as to when the respondent No.1 acquired knowledge about the execution of the sale deed and the sanctioning of mutation in question. Thus, at this stage, it cannot be said that the relief of declaration sought was beyond limitation.

It would be pertinent to observe here that while adjudicating upon an application under Order VI Rule 17 CPC for amendment of the plaint, the Court is not required to delve into an inquiry qua genuineness of the pleadings which are sought to be incorporated. The pleadings are mere averments which are required to be proved by leading evidence and a party has a right to set up its case by way of essential pleadings as it may deem fit, though subject to necessary exceptions.

The Court while dealing with an application under Order VI Rule 17 CPC should consider whether the amendment would help in determining the real controversy between the parties or not. The endeavour of the Court should be to prevent multiplicity of proceedings as far as possible. In the instant case, the suit was at the initial stage when the application under Order VI Rule 17 CPC was filed. Admittedly, even the issues had not been framed. Therefore, it cannot

be said that the amendment in plaint would in any manner adversely affect the case of the petitioner; especially as he would get due opportunity to file his amended written statement.

As a sequel to the above, the instant petition being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 14, 2022
rps

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