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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CR-6309-2019**

Date of Decision: November 22, 2022

Nishan Singh

..... Petitioner

Versus

Ajit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.B.S. Jaswal, Advocate for the petitioner.
Mr. Ramnish Puri, Advocate for the respondents.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to an order dated 02.09.2019 passed by the Court of Additional Civil Judge (Senior Division), Baba Bakala Sahib; whereby prayer made at the instance of petitioner/ plaintiff, (hereinafter referred to as 'the petitioner) seeking amendment of plaint so as to incorporate three khasra numbers has been declined.

Facts leading to the present case are that the petitioner filed a suit for declaration claiming himself to be owner to the extent of 1 kanal 1 marla out of 63 kanals 17 marlas of land owned by the respondents/ defendants (hereinafter referred to as 'the respondents') as detailed in para 1 of the plaint.

The suit was filed in September 2016. Issues were framed thereafter in January 2018. Evidence of the petitioner was concluded in July 2019; whereas that of respondents in August 2019 and thereafter, when the suit was fixed for final arguments, an application

seeking amendment of plaint so as to include three khasra numbers allegedly forming part of the land owned by respondents came to be filed at the instance of petitioner.

The aforesaid application was opposed by the respondents by filing their objections to the same. Learned trial Court vide order dated 02.09.2019 rejected the prayer made by the petitioner. It is said order which has been impugned by way of present revision petition.

It has been contended on behalf of the petitioner that by way of amendment, petitioner merely seeks to include three khasra numbers i.e. Khasra No.156 (0-18), Khewat No.205/388, Khasra No.81//1/12 (0-6) and 296 (2-4), Khewat Khatuni No. 256/500 of Village Butter Sivia, Tehsil Baba Bakala Sahib, District Amritsar, which form part of the joint ownership of respondents, besides making prayer for joint ownership along with the respondents in the suit property as detailed in para 1 of the plaint. Learned counsel further submits that the land now sought to be included as part of the suit property stated to be owned by respondents was never in their notice and despite due diligence, it could not be included as a part of the suit property as no objection or details in this regard was ever pointed out by the respondents in their written statement.

On the other hand, learned counsel for the respondents submits that the evidence of both the parties was concluded way-back in 2019 and accordingly, there has been an unexplained and inordinate delay in filing of the application on the part of the petitioner, thus, the impugned order is just and proper and calls for no interference. Learned counsel further submits that the petitioner has

been negligent in pursuing his suit and the application was filed merely to cause prejudice to the rights of the respondents.

I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner. Though, there appears to be some delay on the part of petitioner, seeking amendment of his plaint, however considering the facts and circumstances of the present case; wherein the petitioner is seeking declaration as regards ownership qua 1 kanal 1 marla of land out of the total land jointly owned by the respondents, the inclusion of three khasra numbers so as to make the total joint ownership of respondents from 63 kanals 17 marlas to 67 kanals 5 marlas and also to include prayer for claiming joint ownership is neither going to change the cause of action; nor it would result into setting up of a new case at the instance of the petitioner. Furthermore, in case the amendment sought for at the instance of petitioner is allowed, it would not cause any prejudice to the rights of the respondents, as the claim of the petitioner is merely to the extent of 1 kanal 1 marlas out of the joint holdings of respondents. Allowing the application for amendment of plaint so as to include three more khasra numbers would in fact bring the true facts on record as regards ownership of the respondents qua the suit land and would rather help the Court to adjudicate upon the rights of the parties in a complete and effective manner.

Resultantly, in view of the discussion made hereinabove, the present revision petition is allowed. Impugned order dated

02.09.2019 is hereby set aside being based on a hyper-technical approach; rather than to further the cause of substantial justice.

However, considering the facts and circumstances of the case, wherein application seeking amendment of plaint was filed at the instance of the petitioner at the fag end of the trial and just before the final arguments, in order to balance the equities, the petitioner shall be subjected to costs of Rs.10000/- to be paid to the respondents as a condition precedent. The costs shall be tendered before the trial Court on the date fixed.

November 22, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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