

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

CR No.8216 of 2019 (O&M)
Date of decision: 14th November, 2022

Jeeto @ Surjit Kaur

... Petitioner

Versus

Balbir Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Amit Arora, Advocate for the respondents.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the order dated 30.10.2019 (Annexure P-5) passed by the Court of learned Additional Civil Judge (Sr. Divn.), Tarn Taran whereby his application for amendment of the plaint under Order VI Rule 17 CPC was dismissed.

Learned counsel for the petitioner submits that the impugned order suffers from material irregularity and being contrary to the settled principles of law, deserves to be set aside. He submits that the trial Court failed to appreciate that it was due to inadvertence of the earlier counsel representing the petitioner that the original plaint did not contain all the material particulars qua the matter in issue, between the parties. He submits that though the petitioner alleged that the sale deeds dated 03.02.1983 and 06.03.1986 were not executed by his father, however, due to inadvertence the aforesaid sale deeds were not

challenged in the plaint, therefore, the petitioner now wanted to incorporate the relief of declaration qua them and in addition thereto, also wanted the addition of alternative relief of possession. Learned counsel urged that the amendments sought by the petitioner were necessary for the just and effective adjudication of the case in hand, more so, to avoid multiplicity of the proceedings between the parties. He still further submits that the petitioner, who is a rustic lady, should not be made to suffer on account of the mistake of her previous counsel, more so, when the proposed amendment would not in any manner prejudice the respondents.

Per contra, learned counsel for the respondents has controverted the submissions made by the counsel opposite and asserted that the proposed amendments are substantial in nature which, without a doubt, would change the entire complexion of the suit in question. He submits that the petitioner was well aware of all the facts which she was now seeking to include by way of the proposed amendment, however for the reasons best known to her, rather obvious, she chose to keep quiet all along and it was at a highly belated stage, the application under Order VI Rule 17 CPC was moved and apparently to delay the conclusion of the trial and to fill in the lacunae in the case.

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

No doubt, the Courts should be liberal in allowing all such amendments of the pleadings which would be necessary for the

determination of the real controversy between the parties, however, at the same time, the Courts cannot be expected to turn a blind eye and must remain alive to any prejudice or injustice which could be caused to the opposite party on account of the proposed amendment. It would be apposite to reproduce Order VI Rule 17 CPC, which reads as under:

“17. Amendment of pleadings

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

PROVIDED that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

A bare reading of the proviso to Order VI Rule 17 CPC makes it abundantly clear that once the trial has commenced, amendment of the pleadings should not be allowed in a routine manner unless and until the party seeking such amendment is able to show that despite exercise of due diligence, the proposed amendment could not have been brought forth earlier or raised before the commencement of the trial.

Adverting to the case in hand, the suit in question was filed in the year 2018 and the application under Order VI Rule 17 CPC was

filed much after the commencement of the trial and that too, after the respondents had concluded their evidence.

The petitioner has miserably failed to satisfy this Court as to why she was unable to seek the proposed amendment before the commencement of the trial. During the course of arguments, it was conceded by the learned counsel for the petitioner that the amendments which are being sought in this application under Order VI Rule 17 CPC, were within the knowledge of the petitioner prior to the commencement of the evidence of the respondents. Therefore, it cannot be digested that it was on account of an accidental slip or inadvertence of her counsel, the proposed amendment which the petitioner is now seeking to incorporate, could not be mentioned in the plaint or the application under Order VI Rule 17 CPC could not have been moved by her prior in time. This Court does not concur with the learned counsel for the petitioner that the proposed amendment would not change the complexion of the suit. Rather a perusal of the proposed amendment which the petitioner is now seeking to add would, without a doubt, change the entire colour of the suit. In case the proposed amendments are allowed, it would displace the case of the defendants as pleaded by them in their written statement. Furthermore, allowing an amendment in the plaint at this stage, when admittedly the trial is at its fag end, would result in de-novo trial, which without a doubt would prolong the litigation between the parties.

Since the petitioner did not act diligently coupled with the fact that the proposed amendment of the plaint was sought at the fag end of the trial, this Court has no hesitation in holding that it would be highly prejudicial to the case of the respondents.

As a sequel to the above, this Court is not inclined to exercise its revisional jurisdiction and set aside the impugned order dated 30.10.2019 (Annexure P-5). The instant revision petition accordingly stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

November 14, 2022

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No