

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

Sr. No.111

CR-92-2023 (O&M)

Date of Decision: 16.05.2023

Ram Kumar

...Petitioner

Versus

Smt. Dhanpati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Anurag Jain, Advocate and
Ms. Suruchi Sharma Tiwari, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for respondents No.1 to 5.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 05.12.2022 (Annexure P-7) passed by Ld. Civil Judge (Sr. Division), Hisar, whereby an application for amendment of plaint, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for declaration to the effect that he is owner in possession of agricultural land measuring 21 Kanals 01 Marla, being 1/6th share of total land measuring 126 Kanals 9 Marlas, situated at Village Barwala, Tehsil Barwala, District Hisar and is also owner in possession of 1/6th share in respect to two plots and residential house situated at Dhani Khan Bahadur, Tehsil and District Hisar, as the property is ancestral in nature and being joint Hindu family property, petitioner/plaintiff is entitled for the said share. Further, challenge has been laid to

will No.205 dated 16.03.2011 executed by deceased Phoosa Ram, on the ground that suit properties being ancestral and joint Hindu family property, the distribution of the same ought to have been in equal share and further the Will No.206 dated 16.03.2011 executed by respondent/defendant No.1 (mother of the plaintiff and defendants No.2 to 6) has been cancelled at the behest of respondent/defendants No.2 to 5 so as to deprive petitioner/plaintiff of his legitimate right.

2.2. Further, a decree of permanent injunction has been sought for restraining respondents/defendants from interfering in peaceful possession of land measuring 15 Kanals 0 Marla situated at Dhani Khan Bahadur, Tehsil Barwala, District Hisar and for possession of remaining land measuring 6 Kanals 8 Marlas and for partition and possession of 1/6th share of plots/residential house has been prayed for.

2.3. Upon notice, respondent/defendants No.1, 3 & 4 and respondent/defendant No.6 filed a separate written statement, controverting the averments made in the plaint.

2.4. Petitioner/plaintiff rebutted the averments made in the written statement by filing rejoinder on the ground that as respondent/defendant No.1 on 13.08.2021 alienated the suit land measuring 12 Kanals 10 Marlas in favour of respondent/defendant No.4 and land measuring 8 Kanals 6 Marlas in favour of respondent/defendants No.2 to 5 vide registered release deed dated 13.08.2021 (Annexure P-4). Further, mutation No.17318 of the said release deed was sanctioned on 06.09.2021. Also respondent/defendants No.2 to 6 had also taken possession of land measuring 2 Kanals 16 Marla illegally from petitioner/plaintiff, leaving the latter with possession of 12 Kanals 4 Marlas.

2.5. As during the pendency of the suit, the suit land was alienated in favour of respondent/defendants No.2 to 5, which has direct bearing upon the rights of petitioner/plaintiff *qua* the suit land and being a subsequent event, the necessity arose for seeking amendment of plaint. Consequently, application (Annexure P-5) under Order 6 Rule 17 read with Section 151 CPC was filed. Respondent/defendant No.6 raised no objection to the said application. Whereas respondents No.1 to 5/defendants contested the same by filing joint reply.

2.6. Vide impugned order, the Ld. Trial Court dismissed the said application.

3. Learned counsel for petitioner would argue that amendment of plaint is required for avoiding multiplicity of litigation; the alienation of part of suit property on 13.08.2024 after filing of suit has material effect on the rights and obligations of parties; the amendment shall not change the nature of present suit; nor change the cause of action; it shall not cause any *prejudice* to defendants and that amendments is necessary for proper and just adjudication of controversy and ought to have been allowed.

4. Learned counsel for respondents No.1 to 5 opposes the prayer made by petitioner by arguing that original plaint and amended application are contradictory to each other.

5. Having heard the arguments of learned counsel for parties, it emerges that the only serious opposition to the proposed amendment in the plaint is that the relinquishment deed pertains to certain land which is not part of the suit land while the same is being seriously controverted by learned counsel for petitioner/plaintiff. There is no such stand taken in reply Annexure P-6 to the amendment application. Release deed dated 13.08.2021 shows that it is for a part of suit land.

6. Be that as it may, the rival factual contentions are to be adjudicated by Ld. Trial Court only after the parties adduce their respective evidence and it is not for this Court to deal with the same merely on the basis of arguments. As regards the proposed amendment, being a subsequent event i.e. execution of relinquishment deed executed by plaintiff's mother in favour of his other brothers by ousting him and plaintiff wishes to challenge the said relinquishment deed. Therefore, to suggest that since the same was not part of the original suit, is completely out of place as plaintiff could have no premonition of his mother relinquishing her share in favour of his brothers in future.

7. Furthermore, needless to say that the plaintiff has to stand on his own legs on the basis of what he pleads and proves by adducing evidence. Defendants naturally would have chance to rebut the evidence *qua* relinquishment of land and to show as contended herein that the plaintiff had/has no claim on the same.

8. The proposed amendment is neither contradictory to the unamended plaint nor does it change the nature of suit. Therefore, the application seeking amendment of plaint ought to have been allowed by Ld. Trial Court. Apart from the relinquishment deed, plaintiff also wishes to amend his plaint *qua* his alleged dispossession which happened during pendency of trial. The same being also a subsequent development during pendency of trial, ought to have been allowed.

9. As far as the plaintiff is concerned, he filed the application for amendment of plaint without any delay and therefore, he cannot be blamed for delaying the trial nor is it the case of defendants that proposed amendment is barred by limitation.

10. Consequently, the revision petition is allowed. Impugned order is set aside and the application seeking amendment of plaint, filed by petitioner/plaintiff is allowed. Ld. Trial Court to proceed further in accordance with law.
11. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 16, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No