

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5080-2016 (O&M)

Date of Decision: August 18, 2023

Sohan Singh Sanghera

...Petitioner

Versus

Jasmail Singh Sanghera and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajiv Joshi, Advocate
for the petitioner.

Mr.Vaibhav Sehgal, Advocate
for respondent No.1.

ARCHANA PURI, J.

Through the present petition under Article 227 of the Constitution of India, the petitioner has invoked the jurisdiction of this Court to challenge the order dated 15.07.2016 (Annexure P-6) passed by learned Court below, whereby, an application under Order 6 Rule 17 CPC filed by the petitioner and respondent No.4, was dismissed.

The facts, as culled out from the paperbook are that, initially, the petitioner along with co-plaintiffs, who are proforma respondents, in the present revision petition, had filed a suit for seeking declaration to the effect that plaintiffs along with defendants No.1 and 3 are joint owners in joint

possession of the land, as detailed in the head note of the plaint and also sought declaration thereby, challenging the legality and validity of the sale deed dated 24.05.2012, executed by defendant No.1, being attorney of Lashkar Singh, in favour of defendant No.2 (his wife) and also plaintiffs, sought relief of permanent injunction to restrain the defendants from alienating, selling, transferring, mortgaging or creating any kind of charge or dispossessing the plaintiffs from the suit property.

When the case was at the stage of rebuttal evidence, an application under Order 6 Rule 17 CPC was filed, on the basis whereof, the petitioner (one of the plaintiffs) wanted to seek joint possession as co-owner/co-parceners, after declaring plaintiffs No.1 to 4, as co-owners and co-parceners to the extent of specified share of 1/6th each, besides defendants No.1 and 3, to be also co-owners, to the extent of 1/6th share of the land in question.

The application for seeking amendment of the plaint had been rejected by learned Court below, thereby, assigning two following reasons; firstly, that both the parties have already led their evidence and instant application has been filed at the fag end of the trial; and secondly, the proposed amendment was well within the knowledge of the plaintiffs, right from the very beginning and it is not the case that despite due diligence, the parties would not raise the matter, before the commencement of the trial.

Before proceeding further, it is essential to make reference to the decision rendered by the Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another*,

CR-5080-2016

2023(1) RCR (Civil) 851, wherein, the law relating to the amendment of pleadings was summed up in eleven points and specifically, few of the relevant points, for allowing the amendment, are as follows:-

- if the amendment is required for effective and proper adjudication of the controversy between the parties;
- where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed;
- Amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint;

It was also observed that where the amendment sought is only with respect to the relief in the plaint and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

In the light of the aforesaid dictum, the amendment can be allowed at any stage, but for the good grounds, spelt out for the same. However, both the reasons assigned by learned Court below, for dismissal of the application, in the case in hand, are erroneous. Reading of the plaint, which has been placed on record as Annexure P-1 and amendment, as sought for, do not establish that if the proposed amendment is allowed, there would be any change in the nature of the suit. Originally, the suit was filed for declaration to the effect that plaintiffs and defendants No.1 and 3 are joint co-owners in joint possession of the land, as detailed in the head note of the plaint. By way of proposed amendment, the petitioner is pleading that the plaintiffs are co-owners/co-parceners to the extent of 1/6th share. This they had claimed, besides seeking declaration, vis-a-vis, legality and validity of the sale deed dated 24.05.2012. Thus, the petitioner, who is one of the

plaintiffs, is only giving the specific share, which, they are entitled. Thus, this proposed amendment is more of clarificatory nature, which shall enable the Court below to further pin-pointedly consider the dispute and would also aid in rendering a more satisfactory decision, without changing the nature of the suit. No malafide, as such, can be spelt out, on the part of the petitioner, while moving an application for amendment, as it is categorically stated even in the application itself that the plaintiff is not to lead any affirmative or rebuttal evidence, as proposed amendment relates to the relief only and it does not change the nature of the suit.

For the reasons recorded aforesaid, the present revision petition is allowed. The impugned order dated 15.07.2016 is hereby set aside and the application filed by the plaintiffs, seeking amendment of the plaint stands allowed.

August 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No