

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

**Civil Revision No. 8599 of 2015(O&M)
Date of Decision: 29.08.2023**

Ajaib Singh

...Petitioner

Versus

Inder Singh & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Aayush Gupta, Advocate
For the petitioner.**

Respondents ex-parte.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner/ plaintiff against the order dated 13.10.2015 (Annexure P-7) whereby the application filed by the petitioner under Section 151/152 CPC for amendment of the plaint as well as *ex-parte* judgment and decree dated 29.05.2009 has been dismissed by the Court of Civil Judge (Jr.Divn.) Ludhiana.

2. The brief facts of the case are that petitioner Ajaib Singh and his sons filed suit for grant of a decree of permanent injunction restraining the respondents/ defendants from interfering into their peaceful possession over the suit land measuring 20 *kanal* 11 *marlas* detailed as under:-

(a) *Land measuring 18K-15M, comprising of khewat No. 42, Khatauni No. 47, Rect. No. 62, Killa No. 10/1, 11/1/1, 11/1/3, 11/2/1, 11/2/2, Rect No. 63, Killa No.6*

(b) *Land measuring 1K-16M, comprising of Khewat No. 418, Khatauni No. 440, Rect. No.63, Killa No.5/2, as entered in the jamabandi for the year 2001-2002, situated in village Alamgir,*

H.B. No. 273, Tehsil and District Ludhiana and from in any manner illegal and forcibly dispossessing the plaintiffs from the said land, on the basis of oral and documentary evidence.”

3. Notice of the suit was issued to the respondents but they did not appear in the learned trial Court and were proceeded against *ex-parte*. Learned trial Court decreed the suit vide judgment and decree dated 29.05.2009. After the passing of the said judgment and decree the petitioner filed an application under Section 151/ 152 CPC for amendment of the plaint and judgment and decree dated 29.05.2009 on the ground that the actual area of suit property is *21 kanals 08 marlas* and not *20 kanals 11 marlas* as pleaded in the plaint and thus prayer is made for necessary correction on the ground that the aforesaid discrepancy appeared due to typographical mistake in the plaint.

4. The learned trial Court after hearing the counsel for the petitioner, dismissed the said application vide order dated 13.10.2015 (Annexure P-7) while holding that the Court concerned being an executing Court cannot go beyond the decree passed by a competent Court and further observed that the relief of amendment of plaint could have been availed by the petitioner before the commencement of the trial.

5. I have heard counsel for the petitioner and gone through the record of the case.

6. The counsel for the petitioner submits that the discrepancy in area has crept in due to typographical mistake, otherwise *khewat* numbers, *khatoni* numbers and *khasra* numbers are same as has been detailed in the original plaint. The counsel for the petitioner further submits that in head note (a) of the plaint the area of land is to be rectified as *19 kanal 01 marla*

in place of 18 *kanal* 15 *marla* and in head note (b) of the plaint the area of the land is to be rectified as 02 *kanal* 07 *marlas* in place of 01 *kanal* 16 *marla*. The counsel for the petitioner further submits that such type of clerical mistake could be corrected by invoking the provisions of Section 152 CPC.

7. I have considered the submissions made by counsel for the petitioner.

8. The petitioner and his sons are decree holders and their suit for grant of decree of permanent injunction was decreed *ex-parte* vide judgment dated 29.05.2009 passed by the Court of Additional Civil Judge (Sr.Divn.) Ludhiana. It appears that the said *ex-parte* decree has not been challenged by the respondents. The petitioner and his sons filed an application under Section 151/ 152 CPC for correction of judgment and decree sheet and amendment of the plaint as has been discussed above.

9. From the perusal of Sections 152 and 153 CPC, it is apparent that the Court may at any time, amend any defect or error in any proceedings in a suit which had crept on account of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. Section 153 CPC enables the Court to permit amendment of any defect or error in any pleadings in a suit.

10. Keeping in view the aforesaid discussion, this Court is of the view that the trial Court was having enough powers under Sections 152/ 153 CPC in order to rectify the typographical mistake regarding total area of suit property which was described as 20 *kanal* 11 *marla* in place of 21 *kanal* 08 *marla* due to over sight. The learned trial Court while passing the impugned

order did not take into consideration the provisions of Section 153 CPC wherein Courts have been empowered to amend any such defect or error by way of amendment for the purpose of determining the real question or issue raised by or depending on such proceedings and such correction could be made at any time. Thus, the impugned order is not sustainable in the eyes of law.

11. Consequently, the revision petition is allowed. The order under challenge is set aside. The application filed by the petitioner under Sections 151/152 CPC is allowed. The learned trial Court is directed to permit the petitioner to amend the plaint to the extent stated above and further to rectify the *ex-parte* judgment and decree dated 29.05.2009 accordingly.

29.08.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No