

CR-2359-2023 (O&M)

118

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-2359-2023 (O&M)****Date of decision: April 20, 2023**

Narinder Kumar Jain

....Petitioner

versus

Satish Kumar Jain and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Susheel Gautam, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Revision petition herein is to set aside impugned order dated 17.03.2023 (Annexure P-8) passed by learned Civil Judge, Junior Division, Faridkot, whereby application under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short 'CPC') for amendment of plaint, was dismissed.

2. Learned counsel for petitioner-plaintiff contends that petitioner-plaintiff filed a suit (Annexure P-1) against respondents No.1, 2, 7 to 12 for partition claiming his separate possession in property registered in the name of late Munshi Ram Jain being his legal heir as late Munshi Ram Jain died intestate. Respondent No.2 filed her written statement (Annexure P-2) to the suit, from which several new facts came into the knowledge of petitioner concerning suit property as well as from the record produced by Municipal authorities in the Court at Jalandhar in December-2017, in case titled "Nitin Kumar Jain Vs Narinder Kumar Jain and others" bearing case No.CS/448/2017, disclosing new facts that a portion of suit property had already been sold by respondents No.7 to 12 to Baljit Singh son of Garebu Singh and Pal Singh son of Chand Singh, who further sold a portion of suit property to Inderjit Singh son of Gurmail Singh.

CR-2359-2023 (O&M)

2.1. He also contends that it also came to the knowledge of petitioner-plaintiff that defendant-Satish Kumar Jain and deceased Rajinder Kumar Jain (father of respondents No.7 to 12) without knowledge of petitioner got transferred suit property in their name from Municipal Council authorities, on the basis of some alleged unregistered Wills of late Munshi Ram Jain and late Smt. Rattan Devi (parents of petitioner).

2.2. Aforesaid alleged Wills were also challenged in Civil Suit No.448/2017 at Jalandhar by son of petitioner in respect of same property against petitioner and other respondents and while leading his evidence and production of record by Municipal Corporation, some new facts came to the knowledge of Nitin Kumar Jain and same were incorporated in the suit by moving an application for amendment which was allowed and thereafter, amended of plaint was filed. Amended plaint (Annexure P-3) was challenged before this Court by one of the respondents, namely, Satish Kumar Jain by way of CR-6211-2018, which was dismissed vide order dated 14.09.2022 (Annexure P-4). Therefore, petitioner-plaintiff filed an application (Annexure P-5) under Order VI Rule 17 of CPC along with application under Order I Rule 10 of CPC for making necessary amendments in his suit and to challenge forged Wills of his late parents along with other forged documents, and to implead necessary parties to the suit. Vide order dated 22.01.2020, learned trial Court allowed application for impleadment of defendants No.3 to 8. But vide impugned order dated 17.03.2023 (Annexure P-8), learned trial Court dismissed the application seeking amendment of plaint.

3. I have heard learned counsel for petitioner and perused the case file.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. I have heard learned counsel for petitioner and perused the case file.

CR-2359-2023 (O&M)

6. What thus emerges is that on one hand, learned Court below allowed the impleadment application under Order I Rule 10 of CPC to add defendants No.3 to 8 as party. After the same was done when the amendment application was filed under Order VI Rule 17 of CPC by the plaintiff to bring on record subsequent developments of property having been sold to aforesaid newly added defendants. In my opinion, the proposed amendment would not change nature of suit, therefore, ought to have been allowed. In any case, trite law it is that subsequent developments after filing of suit ought to be brought on record by way of necessary amendments in the pleadings in case, the same are relevant. The proposed amendment being relevant ought to have been allowed.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence over substantive justice.

8. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/plaintiff for amending plaint, subject to payment of costs of Rs.5,000/- to be paid to respondents No.1 to 6. To that extent, impugned order is set aside and the revision petition is allowed.

9. Disposed of, accordingly.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No