



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1849-2017 (O&M)

Date of Decision: August 22, 2024

Gurmail Singh

...Petitioner

Versus

Harmesh Lal and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashok Bhardwaj, Advocate
for the petitioner.

Mr.Munish Gupta, Advocate
for the respondents.

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 23.01.2017 (Annexure P-6) passed by learned trial Court, whereby, an application under Order 6 Rule 17 CPC, filed by the petitioner for amendment of the site plan, was dismissed.

The facts, as culled out from the paperbook are as follows:-

That, initially, petitioner-plaintiff Gurmail Singh had filed a suit against the respondents-defendants No.1 and 2, for seeking partition through separation of 1/3rd share of the plaintiff, out of the suit property, from

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defendants No.1 and 2, marked shown red, in the site plan annexed, bounded as East:PWD Road, West:house of Ram Dass, North:shop of Ram Dass, South:Passage, situated within the abadi of Garhshankar, Tehsil Garhshankar. Therein, it was asserted that Darshan Singh s/o Mangu Ram was the owner in possession of the suit property. Darshan Singh, during his lifetime was looked after by the plaintiff as well as the defendants and being happy with their services, he had executed a registered Will dated 28.08.1998, in favour of the plaintiff and defendants, in equal shares, regarding moveable/immoveable property.

After his death, the petitioner-plaintiff as well as respondents-defendants No.1 and 2, became owner in possession of the property to the extent of 1/3rd share each.

Written statement was filed on behalf of defendant No.1-Harmesh Lal, wherein, various preliminary issues were raised and also asserted about the site plan produced by the plaintiff and boundaries mentioned therein, to be wrong. On merits, it was asserted that the suit property was given by Darshan Singh to the defendant.

When the case was at the stage of recording of evidence of defendant No.2, an application under Order 6 Rule 17 CPC was filed, at the instance of the petitioner-plaintiff. In the application, it was asserted that the plaintiff had categorically mentioned, as to who all are in possession of the property, towards East, West, North and South direction. However, inadvertently, while preparing the site plan, the draftsman had mentioned wrong directions in the site plan, on the basis whereof, now he want to make



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the mention of correct boundaries.

However, in reply, the application was resisted and a prayer was made for dismissal of the same.

After hearing learned counsel for the parties, vide impugned order dated 23.01.2017, the application was dismissed by learned trial Court.

Feeling aggrieved by the order of dismissal of the application, the petitioner-plaintiff has filed the present revision petition.

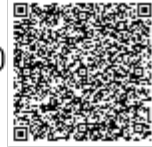
Learned counsel for the parties heard.

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, 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;

The amendment can be allowed at any stage, but for the good grounds, spelt out from the same.

Learned trial Court had concluded, while observing that it was a suit for partition, filed at the instance of the petitioner-plaintiff. He had



led the entire evidence and even, defendant No.1 had completed his evidence and now, the case is fixed for evidence of defendant No.2, when the application in hand was filed. Since, specific plea has been taken by defendant No.1 that the site plan and the boundaries are wrong, now, the petitioner-plaintiff cannot be allowed to fill up the lacunae, in the present case and therefore, application was dismissed.

However, it is pertinent to mention that during the course of making submissions, it was pointed out by learned counsel for the petitioner that the boundaries have been correctly mentioned in the headnote of the plaint, but however, in the site plan, it was reflected in the wrong manner by the draftsman.

In the given circumstances, the proposed amendment is more of clarificatory in nature, which shall enable learned trial Court, to further pinpointedly consider the dispute and would also aid in rendering a more satisfactory decision, without changing the nature of the suit. More particularly, there is no dispute about the suit property to be not identifiable. In view of the same, no malafide, as such, can be spelt out, on the part of the petitioner, while moving an application for amendment, as it is categorical claim that the boundaries have been correctly mentioned in the headnote of the plaint.

In the light of the same, the proposed amendment, as such, is not going to change the nature of the controversy involved or about the identification of the suit property.

For the reasons recorded aforesaid, the present revision petition



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is allowed. The impugned order dated 23.01.2017 is hereby set aside and the application filed by the petitioner-plaintiff, seeking amendment of the site plan, stands allowed.

August 22, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No