



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1672-2024 (O&M)
Date of Decision:-08.05.2024

Ranbir

... Petitioner

Versus

Chanderbhan and Other

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Surinder Gaur, Advocate
for the petitioner.

None for respondents No.1 to 4.

Mr. Raghujeet Singh Madan, Advocate
for respondent No.5.

Respondents No. 6 to 9 are perfunctory respondents.

RITU TAGORE, J. (Oral)

1. Challenge in this revision is to order dated 26.02.2024 (Annexure P-8), passed by learned Additional Civil Judge (Senior Division), Bahadurgarh dismissing the application filed by the petitioner-plaintiff, for amendment of the plaint.

2. Learned counsel for the petitioner contends that learned trial Court wrongly dismissed the application for the amendment of plaint on the



ground that it was moved belatedly with no explanation. However, the petitioner provided a cogent explanation, pleading that during preparation of arguments in the case, his counsel discovered certain relevant facts regarding the inheritance of suit land by the petitioner's grandfather, Gordhan, from his ancestor Ramjas s/o Mohan, the great grandfather, vide mutation No.5 dated 31.01.1909. These facts could not be incorporated initially due to non-availability of document at the time of filing of the suit. Therefore, name of great grandfather, Ramjas could not be mentioned in the pedigree-table and consequently in the averments of the plaint.

3. Learned counsel stated that petitioner-plaintiff, filed a suit for declaration with consequential relief of permanent injunction to declare the sale deed No.3062 dated 04.07.2007, subsequent mutation No.1254 and revenue record as illegal, null-&-void, not binding upon his rights. Learned counsel submits that plaintiff's suit is based on ancestral nature of the property and plaintiff's right in the same as a coparcener. To establish the suit property as ancestral-coparcenary property, it is necessary to establish the devolution of property by inheritance through four generations of male lineage. For this, a pedigree-table is required to be placed on record. Learned counsel stated that amendment is necessary for the just and complete decision of the case and will not change the nature of the suit. In fact, it is explanatory in nature. It is stated that purpose of amendment is to bring all the material and relevant facts related to cause of action and relief on the record, for just and proper decision of the case. A prayer is made to allow the petition.



4. On the contrary, learned counsel for the defendants supported the order, stating that the facts which the petitioner-plaintiff intend to incorporate in the plaint by way of amendment were already within his knowledge and revenue record was also in his possession. It is stated that in the previous suit filed by petitioner-plaintiff on the same ground and regarding the same property, the plaintiff tendered the revenue record and mutation No.5 dated 31.01.1909. So the claim of petitioner-plaintiff that he was not aware of the pleading and did not have the record is clearly untenable and contrary to factual position. Learned counsel stated that petitioner-plaintiff by way of amendment, intends to fill up lacuna in his case, which is prejudicial to the rights of the respondents, and is not permissible in law.

5. Furthermore, it is urged that, based on the details contained in the application, a case of exercise of 'due diligence' is not made out, which is a necessary element for allowing the amendment. It is stated that an amendment application was admittedly moved at the rebuttal stage. The pleas taken in present revision petition and in the application for amendment are contrary to each other. It is stated that, given the factual matrix, learned trial Court has rightly disallowed the application. Learned counsel stated that there is no merit in the petition and prayed for its dismissal.

6. I have heard learned counsel for the parties and have gone through the record.



7. Since the impugned order concerns the dismissal of application for amendment of the plaint, it would be desirable to go through the provisions of Order 6 Rule 17 CPC, which reads as follows:-

“17 Amendment of pleadings.-The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”

8. No doubt, all rules and procedure are hand made of justice but the object of prescribing procedure is to advance the cause of justice. A careful reading of proviso to Order 6 Rule 17 CPC, it is evident that amendment of pleading cannot be allowed after the commencement of trial, unless the party seeking amendment establish that he could not raise the plea(s) before commencement of trial in spite of ‘due diligence’. The proviso is couched in mandatory form and puts an embargo on the jurisdiction of the Court to the effect that before exercising such a jurisdiction, the Court must come to the conclusion that in spite of due



diligence, the party could not have raised the matter before the commencement of the trial.

9. Adverting to the facts of present case, plaintiff wants to amend the plaint, seeking to incorporate the name of Ramjas s/o Mohan, in the pedigree-table to show that suit property devolved upon his grandfather Gordhan from Ramjas (his great grandfather) vide mutation No.5 dated 31.01.1990, to prove the ancestral nature of the land; consequently, his right in the suit property, having inherited from his four male lineage. According to him, he came to know about the defect in the plaint when case was at the stage of final arguments and his counsel was preparing the case; secondly the omission resulted due to non-availability of revenue record at the time of filing of the suit. On the above material grounds, the amendment in the plaint and other resultant pleadings have been sought.

10. In grounds of this petition, the petitioner additionally pleaded that while arguing other civil suit pending between the parties, counsel for the plaintiff, came to know the defect in the plaint.

11. In the impugned order, learned trial Court specifically observed that petitioner in other suit pending between the parties regarding the suit land, presented mutation No.5 dated 31.01.1909 as (Ex.P-19) and is represented by the same counsel, who represented him in other case, so the pleas of inadvertence and non-availability of record are clearly not available to him. Further, photocopy of the judgment dated 24.04.2023 titled **Ranbir Vs Chanderbhan and others**, placed on record by counsel for the respondents reinforces the said observations. The above observations as



made by learned trial Court could not be faulted by the learned counsel for the petitioner, being factually incorrect.

12. From the above facts pleaded by the petitioner, it is apparently clear that petitioner has not accurately stated when the defect in the plaint was discovered, and the case for exercising 'due diligence' is clearly not made out in petitioner's favor. The burden is on the person, who seeks amendment after commencement of the trial, to establish the jurisdictional facts contained in the provision that in spite of due diligence such an amendment could not have been sought earlier. The facts on record indicate the petitioner failed to establish jurisdictional facts, as required under Order 6 Rule 17 CPC, unless such jurisdictional facts found to exist, the Court will have no jurisdiction to allow the amendment application. In this regard, reference can be made to the observations made in **Vidyabai & Ors. Vs Padmalatha & Anr, 2009 (2) SCC 409.**

13. By way of the present amendment, petitioner wants to fill up the lacuna in his case. If the amendment is allowed at this belated stage, it will cause prejudice the respondents. This is one of the important factors to be seen at the time of consideration of the application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on the account of delay in filing the application of amendment.

14. For the reasons, aforesaid, I find that the learned trial Court rightly exercised the jurisdiction, in disallowing the application. There is no illegality in his order, calling for any interference by this Court in this revision-jurisdiction.



15. Finding not merit in the revision-petition, it is hereby dismissed.

16. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

08.05.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No