



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1457-2021 (O&M)

Date of Decision: September 20, 2024

Kuldeep Singh and others

...Petitioners

Versus

Kulwant Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Kumar Chopra, Senior Advocate with
Ms.Gupreet Kaur Bhatti and Mr.Vidul Kapoor, Advocates
for the petitioners.

Mr.Puneet Bali, Senior Advocate with
Mr.Japsehaj Singh, Advocate
for contesting respondents No.1 to 4.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated
19.07.2021 passed by learned trial Court, whereby, an application for
seeking amendment of the written statement was dismissed.

The facts germane, to be noticed, are as follows:-

That, the respondents No.1 to 4 (plaintiffs before learned trial Court)
had filed a suit for permanent injunction against the petitioners and
respondent No.6 (defendants), thereby, asserting that they are owners of the
land measuring 6 Kanal 7 Marla, as comprised in different khewats, as
detailed in the plaint. Also, they put forth the claim that the defendants



CR-1457-2021

-2-

threatened to interfere in their possession and thus, they sought relief of permanent injunction.

On the other hand, in the written statement, the defendants had set up the claim that predecessor-in-interest of the plaintiffs was having big chunk of land and huge property at Darra Kalan. Vide sale deed dated 29.07.1957, Tej Partap transferred portion of this land, in favour of Smt.Vidya Devi and Tarkeshwar Anand, who constructed Rudra Talkies theatre, on the aforesaid property. They also purchased other adjacent land and after transfer of the shares, the aforesaid theatre, came into the share of the petitioners along with respondent No.6.

When the case was at the stage of the arguments, an application for seeking amendment of the written statement was filed by the petitioners, thereby, seeking amendment of paragraph No.3 of the preliminary objections, as due to typographical mistake, the area transferred, vide sale deed dated 29.07.1957, was mentioned as 3 Kanal 18 Marla. It was sought to be substituted by mentioning the extent of land as 4 Kanal 8 Marla.

However, after hearing arguments, the said application was dismissed vide impugned order.

Being aggrieved, the petitioners-defendants have filed the revision petition in hand.

Learned counsel for the parties heard.

At the very outset, learned counsel for the petitioners submits that the proposed amendment relates to the factum of detail of the land mentioned therein, which was purchased vide sale deed dated 29.07.1957.

**CR-1457-2021****-3-**

He submits that the sale deed, as such, did not contain total extent of area, which was purchased and in the mutation got sanctioned subsequently, the extent of the land was mentioned as 3 Kanal 18 Marla, which ought to have been mentioned as 4 Kanal 8 Marla. In fact, it is submitted that an error occurred in the mutation, on the basis whereof, the land was mentioned as 3 Kanal 18 Marla, whereas, it ought to be 4 Kanal 8 Marla. Rather, it is submitted that even the dimensions of the property in dispute, is given in the sale deed, which is to the extent of 4 Kanal 8 Marla. However, mistake in making mention of the land accrued, as the land sold, was in different parts and total extent was not mentioned in the sale deed.

On the other hand, learned counsel for respondents No.1 to 4 submitted that the case was at the stage of final arguments, when the application for amendment of the written statement was filed, which only is a delaying tactic. In fact, it is submitted that when the specific extent of land has been mentioned, at the initial stage of filing of the written statement, therefore, no case for amendment is made out, when the trial has reached at the fag end. It is further submitted that learned trial Court has correctly dismissed the application for amendment of the written statement.

From the bare perusal of Order 6 Rule 17 CPC, it is clear that the Court is conferred with the powers, at any stage of the proceedings, to allow alteration and amendment of the pleadings, if it is of the view that such amendments, may be necessary for determining the real question in controversy, between the parties. The proviso to Order 6 Rule 17 CPC, however, provides that no application for amendment shall be allowed, if



CR-1457-2021

-4-

the trial has commenced, unless the Court, comes to be conclusion that in spite of 'due diligence', the party could not have raised the matter, before the commencement of the trial.

Throughout, much emphasis is laid upon 'due diligence'. However, the same to be existing in the claim put forth by the party, seeking amendment, has to be considered, in the factual backdrop of each case. Simply on the score of case, having reached its fag end, does not make out a case to shut out the proposed amendment.

The Hon'ble Supreme Court in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another, 2023(1) RCR (Civil) 851*, has summarized the law relating to the amendment of the pleadings, which in itself speaks about the stage of the case, ipso facto, to be not a sole consideration to be taken into account. In fact, the stage of the case, ought to be considered, in the factual backdrop of each case.

Now, advertng to the case in hand, it is pertinent to mention that in paragraph No.3 of the preliminary objections in the written statement, the extent of land mentioned is 3 Kanal 18 Marla, which is now intended to be substituted as 4 Kanal 8 Marla. The extent of land is based on the sale deed dated 29.07.1957, which is a registered document. The total extent of land is not mentioned in the sale deed, though the dimensions of the land, forming part of various khasra numbers, as such, has been given. At this stage, the Court should refrain from calculating the extent of the land, on the basis of the dimensions, coming forth in the sale deed. Mistake is stated to have accrued in the mutation, at the time of sanctioning of the



mutation, wherein, the detail of the land, though had been given, but however, the total of the land is mentioned as 3 Kanal 18 Marla and the alleged mistake crept in the written statement.

What is the extent of land and where the alleged mistake accrued and the impact of the same (if any), are the questions of merit, which need not to be considered, at this stage. The sale deed, on the basis whereof, the extent of land is now intended to be substituted as 4 Kanal 8 Marla, instead of 3 Kanal 18 Marla, is already there, proved in evidence. In the given circumstances, such amendment, if allowed, shall not cause any prejudice to the other side.

Though, it is also submitted that this application is a delaying tactic adopted, but however, it should be noted that during the course of making submissions, in the present case, it has been submitted by learned counsel for the petitioners that no evidence, as such, shall be called for, after the allowing of the amendment and precisely, on this account, it cannot be said that amendment is sought, with the purpose to delay the proceedings.

Considering the aforesaid fact situation and to avoid multiplicity of litigation, the impugned order merits interference. Hence, the present revision petition is allowed and the impugned order is set aside, consequent whereof, the application for amendment stands allowed.

September 20, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No