

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3787 of 2024

Date of Decision: 10.07.2024

Basant Pal

.....Petitioner

Vs.

Smt. Sushila and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Simranpreet Singh, Advocate for
Mr. Sandeep K. Sharma, Advocate for
the petitioner.

DEEPAK GUPTA, J. (Oral)

By way of the present petition, order under challenge is dated 01.03.2024 (Annexure P.1) passed by learned Additional Civil Judge (Senior Division), Meham in Civil Suit No.267 of 2017 titled “Smt. Sushila Vs. Dayanand @ Raghbir Singh and others”, whereby amended plaint (Annexure P.5) filed by the plaintiff- respondent No.1 has been taken on record.

Perusal of the trial Court record would reveal that Civil Suit for declaration and consequential relief of permanent injunction was filed by plaintiff- respondent No.1 in which an interim order dated 15.12.2017 was passed. As operation of the said order dated 15.12.2017 was not extended, taking benefit thereof, defendant No.2 executed a transfer deed dated 03.01.2018 in favour of his son Bhumit. Plaintiff then moved an application under Order 1 Rule 10 CPC to implead said Bhumit as a party to the suit. The application was allowed vide order dated 06.01.2023 (Annexure P.4).

Subsequently, plaintiff filed an amended plaint wherein Bhumit was impleaded as defendant No.7 and para No.5A was inserted, so as to challenge the transfer deed dated 03.01.2018 executed by defendant No.2 in

favour of his son Bhumit (impleaded as defendant No.7). Said amended plaint was taken on record by way of the impugned order dated 01.03.2024 (Annexure P.1) by observing that no formal application for amendment of the plaint was required to be moved in the facts and circumstances of the case.

The short submission made by learned counsel for the petitioner-defendant No.2 is that without moving of an application for seeking amendment, the Court could not have allowed to take the amended plaint on record.

After hearing learned counsel, this Court does not find any merit in the petition. Amendment was necessitated due to the own act of the petitioner-defendant No.2 as he executed the transfer deed in favour of his son during pendency of the suit and by way of the amended plaint, plaintiff only inserted the para challenging the transfer deed. Impleadment of the subsequent transferee i.e. Bhumit had already been allowed.

Order 6 Rule 17 CPC reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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.”

As is evident from the afore-said provision, the Court may allow either party to alter or amend his pleadings at any stage of the proceedings, when

such an amendment is necessary for the purpose of determining the real question in controversy. Although the proviso says that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial but the proviso to Order 6 Rule 17 CPC is not applicable to the facts of the present case. The main provision would clearly indicate that no formal application is required to be moved before the Court concerned and that it may at any stage of the proceedings, allow either of the party to alter or amend the pleadings. As noticed earlier, amendment was necessitated on account of the own conduct of the petitioner- defendant No.2 who executed the transfer deed in favour of his son. The Court has allowed insertion of relevant para in the plaint by which the transfer deed executed by the petitioner in favour of his son has been assailed.

This Court does not find any illegality in the impugned order.

Dismissed.

July 10, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No