



CR-4336-2024 (O&M)

135 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CR-4336-2024 (O&M)

Date of decision : 13.08.2024

Jagmandeep Singh Petitioner/plaintiff

versus

Saravjeet Singh & anr. Respondents/defendants

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Shehbaz Thind, Advocate
 for the petitioner.

 Mr. Pardeep K.Kapila, Advocate
 for the respondent-caveator.

PANKAJ JAIN, J. (ORAL)

1 This is a revision directed against the order dated 17.07.2024 passed by Civil Judge, Junior Division, SAS Nagar, Mohali seeking amendment of the plaint. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as plaintiff and respondents as defendants.

2 Plaintiff filed suit for possession by way of partition with respect to residential house admeasuring 16 marlas (hereinafter referred to as suit property). The defendants appeared and filed their written statement. Issues were framed. Plaintiff concluded his evidence. While defendants were leading evidence, present application was moved wherein the plaintiff sought



amendment of the prayer clause as well as incorporation of additional pleadings in the plaint. The precise amendment sought to be incorporated read as under :-

“Suit for Declaration to the effect that the Plaintiff is owner in joint possession of 5.6 Marla in the house no. 7 Green Enclave Mohali, Daun, Tehsil & District Mohall shown as ABCD in the rough site plan measuring 400 Sq. Feet (40'X90') i.e. 16 Marlas which is bounded as under:-

East: House of Kashmir Singh and Bhupinder Singh measuring 40ft

West: Street measuring 40 ft

North: House No.6 of Jagdish Singh measuring 90ft

South: Plot of Gagan Bearing No. 8 measuring 90 ft And the same is comprised in Khewat/Khatauni No. 185/227 bearing Khasra No.40//17(8-0), Khewat/Khatauni No. 185/227 bearing Khasra No.40//18(8-0) situated in the area of village Daun, H.B. No. 27, Tehsil Mohali, & District Mohali

AND

Further declaration to the effect that the sale deed/Transfer Deed bearing Vasika /Document No. 2018-19/3/376 dated 12.04.2018 in respect of 7 Marlas of land out of suit property executed by Manjit Kaur w/o Jang Singh in favour of Sarabjit Singh S/o Jang Singh and Vasika no. 2018-19/3/379 dated 12.04.2018 in respect of 5 Marlas of land out of suit property executed by ManjitKaur in favour of Gurpreet Singh S/o Jang Singh are Illegal null and void and liable to be set aside being without consideration and product of fraud and misrepresentation"

5A That Jang Singh died on 31.12.2017 intestate, whereas after his death the 8 Marlas owned by Jang Singh were mutated in the name of Manjit Kaur, Plaintiff and Defendants in equal share meaning thereby the Plaintiff became the owner of 2 Marlas Manjit Kaur became the owner of 10 Marlas whereas the Defendants No.1 & 2 were owner of 2 Marla each in the suit land"

"6A That after the death of Manjit Kaur who died on 14.09.2018 the share of Manjit Kaur was inherited by the Plaintiff and Defendants in equal share meaning thereby the Plaintiff inherited 3.7 Marlas out of the share



of Manjit Kaur after her death and 3.7 marlas each were inherited by Defendant no.1 & 2 in the share of Manjit Kaur."

"6 B That the Plaintiff was already having 2 Marias which he got through Vasika/Document no. 2018- 19/3/3899 dated 09.07.2018 and thereafter he Inherited 3.7 Marias out of the share of Manjit Kaur thus the Plaintiff became the owner and in possession of 5.7 Marlas of land in the suit land Sarabjit Singh is in possession of more share then he is entitled to get i.e. 7 Marias which is totally illegal"

"12. That the value of the suit for the purpose of the Declarations, partition, and Permanent Injunction the court fee and jurisdiction is Rs.1000/- and a court fee of Rs.200/- is affixed on the plaint."

3 The reason for not incorporating the relief prayed for and the proposed amendment in the pleadings was the inadvertence of the counsel for the plaintiff who forgot to claim the reliefs necessary for the decision of the case.

4 The application was resisted by the defendants.

5 Trial Court vide impugned order dismissed the application seeking amendment of the plaint holding that once it is admitted that the facts were within the knowledge of the plaintiff, there was no reason to allow the amendments and to order de-novo trial in view of the bar contained under Order 6 Rule 17 of the CPC.

6 Learned counsel for the plaintiff at the very outset submits that the plaintiff is ready to forgo the first relief claimed i.e. suit for declaration that the plaintiff is the owner in joint possession of 5.6 marlas in the property in dispute. However presses for second relief proposed by way of amendment to



be incorporated in the plaint with respect to challenge to the sale deed dated 12.04.2018. He submits that it is only during the course of the cross-examination of defendants that the aforesaid fact came to the knowledge of the plaintiff. However he fairly admits that as per the application filed before the trial Court the positive case of the plaintiff was with respect to inadvertence on behalf of counsel for the plaintiff. Law with respect to amendment of the plaint is governed by provision as contained under Order 6 Rule 17 of the CPC which 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.]”

7 The same has been interpreted by Supreme Court in the case of ***Revajeeetu Builders & Developers Versus Narayanaswamy & Sons & Others,*** **2009(10) SCC 84** wherein Apex Court held as under :-

32. To curtail delay in disposal of cases, in 1999 the Legislation altogether deleted Rule 17 which meant that amendment of pleading would no longer have been permissible. But immediately after the deletion there was widespread uproar and in 2002 Rule 17 was restored, but added a proviso. That proviso applies only after the trial has commenced. Prior to that stage, the situation remains as it was. According to the view of the learned author Arun Mohan as observed in



his book, although the proviso has improved the position, the fact remains that amendments should be permissible, but only if a sufficient ground therefore is made out, and further, only on stringent terms. To that end, the rule needs to be further tightened.

8 The proviso appended to Order 6 Rule 17 of the CPC provides 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. It is not in dispute that the trial has commenced, the issues already stand framed and even the plaintiff has led his evidence. The plea raised by applicant before the trial Court does not satisfy the test that the plea could not have been raised before the commencement of trial in spite of due diligence. The reason assigned in the application is not in sync with the one agitated before this Court. This shows that application is not bonafide.

9 In view of above, this Court finds that the amendment sought by the plaintiff being hit by proviso appended to Order 6 Rule 17 of the CPC, there is no merit in the present petition.

10 Resultantly, the same is dismissed.

13.08.2024

Pooja Sharma-I

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No