

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****202****CR-4944-2018 (O&M)****Date of decision: 21.01.2025****Ashok Kumar****...Petitioner(s)****Vs.****Dharampal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vikram Singh, Advocate and
Mr. Abhinav Sood, Advocate for the petitioner.

NIDHI GUPTA, J.

The present revision petition has been filed by the petitioner/plaintiff under Article 227 of the Constitution of India for setting aside the order dated 19.07.2018 (Annexure P-2) passed by learned Civil Judge (JD), Mahendergarh whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amending the plaint, has been dismissed.

2. Learned counsel for the petitioner/plaintiff *inter alia* submits that the petitioner had filed a suit for permanent injunction. During the pendency of the suit, the petitioner discovered that there were certain typographical mistakes in the plaint. Accordingly, the petitioner moved the present application (Annexure P-1) under Order 6 Rule 17 CPC seeking correction of the said typographical errors; and sought permission to amend para-Nos. 1 and 3 of the replication and paras No. 1 and 3 of the plaint. Learned counsel submits that the very



short correction sought by the petitioner by way of the said amendment was that in the plaint and the replication, it had been mentioned 'Rupa son of Kahna', whereas the correct position is 'Kahna son of Rupa'. However, vide the impugned order, the said application of the petitioner has been dismissed without appreciating that only a minor typographical error was to be corrected. It is submitted by way of the said correction/amendment, no prejudice would be caused to the respondents/defendants. He, accordingly, prays that the present revision petition be allowed.

3. Mr. Manish Mehta, Advocate appears on behalf of all the respondents and files Power of Attorney, which is taken on record. Ld. Counsel for the respondents/defendants vehemently opposes the prayer made on behalf of the petitioner and submits that in the present case, the application for amendment has been filed by the petitioner, after commencement of trial, which is not permissible as per law. It is further submitted that the petitioner failed to exercise due diligence and, therefore, the present amendment cannot be permitted.

4. Learned counsel for the respondents/defendants objects to the amendments even on the ground that the dispute in the present suit is regarding the pedigree table; and for this reason as well, the amendment cannot be permitted as the same would have a significant effect on the dispute between the parties. It is submitted that the whole claim of the plaintiff is false, fraudulent, fake and deceptive. The plaintiff by attempting to amend the plaint is trying to voluntarily



change the nature of the suit in as much as Rupa son of Kushala is a different person from Rupa son of Kahna, and both of them are holding different properties. As such, if the amendment is permitted at this stage, it would amount to *denovo* trial.

5. It is thirdly contended by learned counsel that prosecution witnesses PW2 Raj Kapoor, PW3 Joginder and PW4 had duly submitted in their respective testimonies that Rupa is son of Kahna. It is contended that the present application has been filed only to delay the trial.

6. Heard learned counsel for the parties, and perused the case file in great detail.

7. The brief facts of the case are that the petitioner had filed the present suit on 20.09.2014; written statement thereto was filed on 10.11.2014; replication on 27.01.2016; issues were framed on 27.01.2016; the plaintiff evidence stood closed on 01.12.2016; defendants' evidence was closed on 25.05.2017; whereafter 3 effective opportunities were granted to the petitioner to lead evidence in rebuttal; and it is only thereafter, that the present application came to be filed on 28.09.2017 under Order 6 Rule 17 CPC seeking amendment to the plaint.

8. 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."

9. A bare reading of the proviso to the above-said provision shows that it is very categorically stipulated therein that "*...no application for amendment shall be allowed after the trial is 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.*" Admittedly, issues in the present case were framed by the learned trial Court on 27.1.2016; whereas the present application under Order 6 Rule 17 CPC (Annexure P2) for amendment has been filed by the petitioner on 28.9.2017 i.e. *after* trial had commenced - which is not permitted as per law.

10. The only situation in which amendment after commencement of trial is envisaged is if '*in spite of due diligence, the party could not have raised the matter before commencement of trial.*' However, in the present case that is not so as. The facts as now sought to be projected by the petitioner were very much in his knowledge, even at the time of filing of plaint. The petitioner failed to make the necessary corrections even at the time of filing replication. Clearly, therefore, the petitioner has failed to exercise due diligence. As such, it would be illegal to permit the amendment at this belated stage of trial.

11. Moreover, it appears from the pleadings and arguments before this Court that if the amendment is permitted, it



would have irrevocable bearing on the nature of suit and would cause material prejudice to the defendant as, in the present case, it is the pedigree table which is being disputed by the respondent/defendant. It has been categorically stated by the respondent that Rupa son of Kushala is a different person from Rupa son of Kahna, and both of them are holding different properties. It has also been specifically stated by the respondent that the petitioner has deliberately made inconsistent, contradictory, evasive and deceptive pleas in his various pleadings to voluntarily and wilfully mislead and file a fraudulent claim. It has also not been denied by the learned counsel for the petitioner that prosecution witnesses mentioned above have admitted in their respective testimonies that Rupa is son of Kahana. it may also be mentioned that the application of the petitioner is not accompanied by any affidavit.

12. This Court is well aware of the precedent case law holding that in applications of such nature a liberal view ought to be taken. However, keeping in view the entirety of the above noted facts and circumstances of the case, this Court is not convinced to grant the prayer of the petitioner.

13. The present civil revision stands **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

21.01.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No