



CR-672-2020 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CR-672-2020 (O&M)

Date of Decision :28.04.2025

JATINDERBIR SINGH @ SATINDERBIR
SINGH (NOW DECEASED) THROUGH LRS

... Petitioner

Vs.

MANMOHAN SINGH AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Brij Mohan Vinayak, Advocate with
Mr. Kunal Vinayak, Advocate for the petitioner.

Mr. Ankur Ghai, Advocate for respondent No.1.

SUVIR SEHGAL J.

1. Instant revision petition has been filed impugning order dated 06.11.2019, passed by the learned Civil Judge (Junior Division) Ludhiana, whereby an application filed under Order 6 Rule 17 CPC by the plaintiff-respondent No.1, for amendment of the plaint has been accepted.

2. Counsel for the petitioner contends that despite availing numerous opportunities, plaintiff did not produce even a single witness and in order to avoid the dismissal of the suit, filed an application for



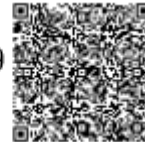
amendment of the plaint, which has been erroneously accepted by the trial Court. He asserts that the amendment could not have been accepted as plaintiff failed to show due diligence. It is his assertion that by virtue of amendment, plaintiff has enlarged the scope of the suit, which cannot be permitted. He has placed reliance upon:-

- (i) ***Bishan Singh and another Versus Roshan Kaur and others, 2011(54) RCR (Civil) 1;***
- (ii) ***Gurdev Singh Versus Tarsem Singh, 2017 (3) RCR (Civil) 488; and***
- (iii) ***Nirmal Kaur Versus Gurdip Singh, Law Finder Doc.Id.# 1615149***

3. While opposing the petition, counsel for respondent No.1/plaintiff has argued that the power vested in the Court to grant amendment is very wide and can be exercised at any stage of the proceedings. He submits that the objective of permitting amendment is to minimize the litigation and bring it to an end expeditiously. He has placed reliance upon ***Abdul Rehman Versus Mohd. Ruldu and others, 2012(11) SCC 341.***

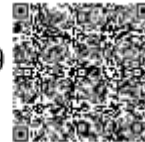
4. I have heard counsel for the parties and considered their respective submissions besides examining the documents appended.

5. Respondent No.1/plaintiff filed a suit, Annexure P-2, for declaration and permanent injunction to the effect that sale deed dated 10.03.2008 in respect of suit property measuring 240 square yards be declared null and void. Suit is being contested by the defendants by filing a written statement, Annexure P-3. Despite availing numerous



opportunities, plaintiff did not file any replication and trial Court framed issues on 21.11.2017. Proceedings were deferred on repeated occasions to enable the plaintiff to lead evidence in support of his case and even a last opportunity was granted to the plaintiff for the said purpose. It was at that stage that the plaintiff filed an application Annexure P-7 on 16.07.2019 for amendment of the plaint. By virtue of the amendment, plaintiff has *inter alia* sought to incorporate the relief of possession of property measuring 660 square yards claiming that it had been purchased on 25.05.1988 from the funds made available by the plaintiff. It has also been claimed that a property had been purchased by Satinderbir in joint name by playing fraud upon the plaintiff and an FIR was registered against him on 25.09.2015. No explanation has been given in the application as to why these facts were not incorporated in the plaint and why this relief was not sought earlier. Plaintiff has been procrastinating and there has been an inexplicable delay in seeking the amendment. The sole reason for seeking emendation has been ascribed as mistake/negligence of the counsel, which cannot be accepted.

6. An examination of the amendment shows that a totally new case has been introduced by the plaintiff by claiming that a fraud has been played upon him. A fresh relief is sought by the plaintiff, which he had never sought at the time of the filing of the suit. Plaintiff has alleged that he was dispossessed after the application under Order 39 Rule 1 and 2 of CPC was dismissed by the trial Court on 21.11.2017. However, despite this fact, the application for amendment was filed in July, 2019. There is an inexplicable delay of two years. In the meantime, trial Court



had framed the issues and trial had commenced. Proviso to Order 6 Rule 17 CPC, which is mandatory, provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that despite due diligence, a party could not have raised the matter before the commencement of the trial. Plaintiff has failed to exhibit due diligence in the moving of the application.

7. In **Chander Kanta Bansal Versus Rajinder Singh Anand, (2008) 5 SCC 117**, Supreme Court has observed that the entire object of Order 6 Rule 17 CPC, as introduced in 2002, is to stall filing of applications for alteration in pleadings subsequent to the commencement of the trial and to avoid surprises. Parties should have sufficient knowledge of each others case. It also helps in checking delays in filing the application and once the trial commences on the known pleas, it is very difficult for any party to reconcile. In **Rajesh Kumar Aggarwal and others Versus K.K. Modi and others, (2006) 4 SCC 385**, Supreme Court observed that although vast power is vested in the Court to alter the pleadings but the basic structure of the suit cannot be changed. In **Abdul Rehman's** case (supra), Supreme Court, has held that if an application for emendation is made after the commencement of the trial, in that event, Court has to arrive at a conclusion that in spite of due diligence, party could not have raised the matter before the commencement of the trial. No such finding has been recorded by the trial Court. The judgment relied upon by counsel for respondent No.1 does not advance its case. Impugned order cannot be sustained and deserves to be set aside.



8. As a result of the above discussion, revision petition is allowed. Impugned order is set aside and application for amendment filed by the plaintiff is dismissed with no order as to costs.

28.04.2025
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No