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

(224)

CR-3793-2023

Date of Decision: - 06.02.2025

Bachitter Singh (since deceased) through LRs**....Petitioner****Versus****Major Singh and another****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Saurabh Kapoor, Advocate,
for the petitioner.

Mr. Inderpal Singh Parmar, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the impugned order dated 01.05.2023 passed by the Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner/plaintiff under Order 6 Rule 17 CPC has been partly dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for declaration to the effect that he was the owner in possession of the land in question against his son and grandson. It is further submitted that in the said suit, a written statement was filed by the defendant No.2/respondent No.2, in which,



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reference was made to an alleged agreement dated 14.06.2010 and also an ex-parte judgment and decree passed in a civil suit filed by the respondents against the present petitioner and other persons. It is further submitted that on learning about the said fact in the written statement, the petitioner moved an application under Order 6 Rule 17 CPC for amendment of the plaint and the said application had been partly allowed, inasmuch as, the amendment qua the averments to be made with respect to challenge to the agreement had been allowed, whereas, the averments with respect to challenging the ex-parte judgment and decree had not been allowed on the ground that such a challenge was not maintainable. It is submitted that at the stage of allowing the amendment, the merits of the amendment is not to be considered and on the said aspect, reliance has been placed upon a judgment of the Hon'ble Supreme Court in case titled as "**Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others**", ***reported as (2006) 4 Supreme Court Cases 385***. It is further submitted that the amendment is necessary for proper and final adjudication of the case and that it has also been observed by the trial Court that the case is at an initial stage. It is also submitted that the Co-ordinate Bench of this Court on 17.08.2023 was pleased to pass an interim stay to the effect that the trial Court was directed to adjourn the case beyond the date fixed by this Court and the said interim order has been continued till date and thus, the suit is at an initial stage.

3. Learned counsel for the respondents, on the other hand, has submitted that in the case of an ex-parte judgment and decree, it is open to



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the petitioner to file an application under Order 9 Rule 13 CPC or to file an appeal and since the same has not been done, thus, in the impugned order it has been rightly observed that such a challenge cannot be made in a separate suit and the trial Court has rightly dismissed the said application. It is further submitted that at any rate, in case any such amendment is allowed, then, liberty should be granted to the respondents to raise all the pleas in the amended written statement to oppose the said challenge.

4. This Court has heard learned counsel for the parties and has gone through the record and finds that the impugned order, insofar as the amendment application of the petitioner has been partly dismissed is illegal and deserves to be set aside and the application filed by the petitioner under Order 6 Rule 17 CPC deserves to be allowed in toto for the reasons stated hereinafter.

5. The Hon'ble Supreme Court in **Rajesh Kumar Aggarwal and others case (supra)** has specifically observed that the cardinal principle for allowing an amendment is to see as to whether the same is necessary to decide the real dispute between the parties and at that stage, the Court should not go into the correctness or falsity or the merits of the case in the amendment. The relevant portion of the said judgment is reproduced as under: -

“xxx xxx xxx

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real



dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. *While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.*

xxx xxx xxx”

6. In the present case, the present petitioner (through legal representatives), who was father and grandfather of respondents No.1 and 2, had filed a suit for declaration to the effect that he is exclusive owner in possession of the land in question. In the written statement, the respondent No.2 had relied upon the ex-parte judgment and decree dated 19.09.2014 passed in a case filed by the present respondents against the petitioner/plaintiff and other persons and also on an agreement dated 14.06.2010.

7. The petitioner thereafter moved an application under Order 6 Rule 17 CPC, in which, it had been stated that the factum with respect to



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the said ex-parte judgment and decree having been passed and also with respect to the agreement, was learnt by the petitioner/plaintiff, who was an old person, from the said written statement. Challenge to the judgment and decree dated 19.09.2014 was sought to be made on the ground of fraud, misrepresentation and violation of principles of natural justice and accordingly, the prayer to make necessary amendments in the plaint was made. The said application for amendment had been partly allowed by the trial Court.

8. The amendment to challenge the ex-parte judgment and decree dated 19.09.2014 had been dismissed by observing that the said challenge cannot be made in the present suit as there are alternative remedies available to the petitioner under Order 9 CPC as well as filing of appeal against the said judgment and decree. In the said order, it was also observed that the trial is yet to commence. It is thus apparent that the amendment has been rejected by considering the merits of the amendment which is in teeth of law laid down by the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and others (supra)** and thus, the impugned order, to the extent that the said amendment has not been allowed, deserves to be set aside solely on the said point. The observation of the trial Court that the trial is yet to commence in the impugned order has not been disputed before this Court. The challenge to the judgment and decree dated 19.09.2014 is necessary for the proper and final adjudication of the case, inasmuch as, since the said judgment and decree is with respect to the suit property, in the absence of the challenge to the

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same, the suit of the plaintiff, cannot be properly and fully adjudicated. The question as to whether such a suit is maintainable or not or whether the plaintiff succeeds or not is not be considered at this stage as the said aspect would be considered at the stage of final arguments.

9. Keeping in view the above-said facts and circumstances, the present revision petition is allowed and the impugned order dated 01.05.2023, to the extent that the application for amendment filed by the petitioner was partly dismissed, is set aside and the application filed by the petitioner under Order 6 Rule 17 CPC is allowed in toto.

10. Needless to say that it would be open to the respondents to file an amended written statement opposing the pleas raised by the petitioner in the amended plaint.

February 06, 2025*naresh.k***(VIKAS BAHL)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes
Yes