



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

264

CR-6295-2019 (O&M)

Date of Decision : 08.01.2025

JASBIR KAUR

.... Petitioner

VERSUS

BALWINDER KAUR AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvind Kashyap, Advocate for the petitioner.

Mr. G.N. Malik, Advocate for respondents No.1 to 3.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 13.09.2019 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Fatehgarh Sahib vide which the application filed by the plaintiff-petitioner Order 6 Rule XVII CPC for amendment of the plaint (wrongly referred to as written statement in the impugned order) was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for possession of the property as mentioned in head note 'A' of the plaint from defendant-respondents No.2 and 3 and a suit for permanent injunction. It was averred in the plaint that property mentioned as ABCD in the site plan Annexure 'X' was meant for tying animals and house shown as EFGHIMJKL was a residential house of the plaintiff-petitioner. From this house, husband of the plaintiff-petitioner

purchased EFGHML from Randhir Singh and Kuldeep Singh vide a registered sale deed dated 16.04.1984. It was further averred that husband of the plaintiff-petitioner opened a door from this property into the main house which was ancestral house and thus the same had merged into the residential house of the plaintiff-petitioner. A Will dated 20.08.1987 was also propounded by the plaintiff-petitioner. When the case was fixed for arguments, the present application for amendment of the plaint was filed by the plaintiff-petitioner stating therein that the word 'EFGHIMJKL' was written in place of word 'EFGHJKL' and that it had inadvertently been pleaded that property shown as ABCD was ancestral and property marked EFGHIMJKL was a purchased one. However, it was vice-versa and that property shown as ABCD had been purchased and the other property was ancestral. Reply was filed to the said application. The application was dismissed vide impugned order dated 13.09.2019.

3. Learned counsel for the plaintiff-petitioner, on a query put by the Court as to whether the evidence had been led with regard to the earlier pleadings or with regard to the amended pleadings, has candidly admitted that the evidence led is qua the initial pleadings. It is the contention of the learned counsel that the mistake was inadvertent and that the plaintiff-petitioner only wants to now plead that the property marked ABCD was a purchased one and the property marked EFGHIMJKL was ancestral in nature.

4. *Per contra*, learned counsel for defendant-respondents No.1 to 3 would contend that the amendment would lead to a *de novo* trial as

admittedly the evidence had been led qua the averments made in the unamended plaint. It is further the contention that the same would amount to changing the entire nature of the suit.

5. Heard.

6. In the present case learned counsel for the plaintiff-petitioner has candidly admitted that the evidence has been led qua the pleadings as stated in the unamended plaint. Had it been an inadvertent mistake in the pleadings, the evidence would have been led otherwise. However, it seems that the evidence led by the plaintiff-petitioner was as per the case set up in the plaint initially filed and now at the fag end of the trial the present amendments are being sought qua which fresh evidence would be required to be led, which cannot be permitted in law. The mistake cannot be treated as inadvertent inasmuch as, as noticed earlier, had it been an inadvertent mistake, the evidence would have been as per the amended pleadings.

7. In view of the above, I do not find any merit in the present revision petition and the same, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.01.2025

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No