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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 10.03.2025

Bir Singh

... Petitioner

Versus

Sohan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Kuldeep Singh, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 20.02.2025 (Annexure P-10) passed by the Civil Judge (Jr.Div.), Amloh, vide which the application of the plaintiff-petitioner for amendment of the plaint has been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for permanent injunction restraining the defendants, their agents and servants from causing any hindrance / obstruction in construction being raised by the plaintiff over his plot of land which is part and parcel of land measuring 8 marlas 3 sarsahies out of the land measuring 1K-12M comprised in khewat no.137/138, khatouni no.259



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khasra no.119 (0-6), 120/3 (1-3), **121/3(0-3)** as per jamabandi for the year 2013-2014 situated within the revenue limits of village Amloh, Teshil Amloh. Learned counsel for the petitioner has submitted that the Municipal Council had issued notice to the petitioner stating that the petitioner needs to remove the illegal occupation over the government land and thereafter the petitioner had filed CWP-33728-2024 and in the said case, on 18.12.2024 the Coordinate Bench of this Court was pleased to pass the order (Annexure P-6), which has been highlighted by learned counsel for the petitioner, which reads as under:-

*“Learned counsel for the petitioner, on instructions, from the petitioner, who is present in the Court submits that he is not in possession of any public land. He further submits that a demarcation may be ordered to be carried out of the land owned by the petitioner (for which the site plan already stands approved by the Municipal Council, Amloh) as well as public streets and **upon demarcation, if the petitioner is found in possession of any public land or land which is not owned by him, then he shall remove his possession therefrom forthwith, without any objection.***

Notice of motion.

Mr. Navneet Singh, Senior Deputy Advocate General, Punjab and Mr. Chandan Singh, Advocate, accept notice on behalf of the respondent-State and respondent No.2/MC, respectively and submit that they have no objection if fresh demarcation is carried out.

In view of the submissions made by learned counsel for the respective parties, let a fresh demarcation of the site claimed by petitioner (regarding which the building plan was



sanctioned by M.C, Amloh) as well as the streets adjacent/or in the vicinity of the land claimed by the petitioner be carried out by the concerned Tehsildar/Revenue Authorities, after associating the petitioner, officials of M.C. Amloh and other concerned parties therein.

The demarcation report be submitted in this Court on or before the next date of hearing.

List on 05.02.2025.”

3. It is submitted that in pursuance of the said order, the demarcation report has been submitted, as per which khasra no.121/1 is stated to be not in the ownership of the Municipal Council. It is argued that in view of the same, the petitioner moved an application for amendment and wanted to replace the “khasra no.121/3(0-3) with khasra no.121/1(0-3) and the said application has been illegally dismissed by the trial Court vide impugned order dated 20.02.2025 and has prayed that the said order be set aside.

4. This Court has heard learned counsel for the petitioner and has perused the paper book and finds that the impugned order has been rightly passed by the learned trial Court and deserves to be upheld and the present petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. A perusal of the order dated 20.02.2025 would show that it has been observed by the trial Court that the trial in the present case has already started and as per the proviso of Order 6 Rule 17 CPC, the application for amendment could be allowed only in case the Court comes to the conclusion



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that despite due diligence, the party could not have raised the matter before the commencement of trial. It was observed that the entire evidence had been led by both the parties with respect to the suit property which bears the khasra no.119, 120/3 and **121/3** and the case had been contested by the plaintiff-petitioner on the plea that he being the exclusive owner in possession of the land wanted to construct the plot whereas the defendants had stated that the petitioner-plaintiff had no concern / connection with the suit property and the plaintiff had wrongly claimed the suit property. It was observed that the entire nature of the case would change and the defence which had already been led by the defendants-respondents would be rendered negatory as the petitioner was seeking to change the suit land itself. It was further observed that in case the amendment is allowed, it would reopen the entire trial and that apart from fresh pleadings, fresh evidence with respect to the property which is now sought to be added i.e., khasra no.121/1 would have to be led. The said order is in accordance with law and deserves to be upheld.

6. Proviso to Order 6 Rule 17 CPC has been incorporated on 01.07.2002 and the said provision 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.”

A perusal of the above provision would show that it has been specifically mentioned in the proviso 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 raise the matter before commencement of the trial.

7. The Hon'ble Supreme Court in the case of ***Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others***, reported as ***2006(12) SCC 1***, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended), the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.

8. In the present case, it is not in dispute before this Court that the evidence of both the parties has been concluded and the case was at the stage of arguments at the time when the application for amendment was filed. A perusal of the application would show that the plea now sought to be raised before this Court was never raised before the trial Court and the plea mentioned in paragraph 2 of the said application, to the effect that there was a typographical mistake, was concededly not a correct plea as



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admittedly there was no typographical error. A perusal of the jamabandi (Annexure P-1) would show that even as per the said jamabandi for the year 2013-2014, it was the case of the petitioner that the property of which he was a co-sharer was comprised in khasra numbers, including khasra no.121/3 and it was not his case that the property of which he was co-sharer is in khasra no.121/1. Although the plaint has not been annexed with the present petition but the said aspect is apparent from the first part of the impugned order. The prayer made in the suit by the petitioner (on running page 35 of the paperbook) is as under:-

*“Suit for permanent injunction restraining the defendants, their agents and servants from causing any hindrance/ obstruction in raising construction by the plaintiff over his plot of land which is part and **parcel of his land measuring 8 Marlas 3 Sarsahies out of the land measuring 1K-12M comprised** in Khewat no.137/138, Khatouni no.259 Khasra no.119 (0-6), 120/3 (1-3), **121/3(0-3), as per jamabandi for the year 2013-2014** situated within the revenue limits of village Amloh, Teshil Amloh and bounded as under:-*

*East : Road
West : House of plaintiff
North : H/o Talwinder Singh
South : Street*

Area 19'2” x 33'9””, illegally and forcibly with dint of force and also restraining the defendants from lifting / removing any building material/ bricks of the plaintiff lying at the spot illegally and forcibly.”

9. A perusal of the suit would show that the present suit is for



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permanent injunction in which the plaintiff was seeking restraint against the defendants from causing any hindrance/obstruction in raising construction by the plaintiff over the plot which was stated to be a plot measuring 8 marlas 3 sarsahies out of the land measuring 1K-12M and specific khasra numbers were mentioned which included khasra no.121/3. Even from perusal of the abovesaid prayer in the suit, it is apparent that the petitioner is claiming construction on a part of the land measuring 1K-12M. On the basis of said pleading, the plaintiff had led his entire evidence. The contesting defendant no.2 also by keeping in view the above said property had defended the case and led his evidence. It has been rightly observed by the trial Court that in case the amendment is allowed at this stage, then the entire trial would reopen. Moreover, the plea raised in the application, to the effect that there being a typographical mistake, is apparently incorrect. At any rate, the plea of there being a “mistake” is inconsistent / destructive to the plea of due diligence.

10. Keeping in view the abovesaid facts and circumstances, the impugned order has been rightly passed by the trial Court and deserves to be upheld and the present petition being meritless deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

March 10, 2025

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No