

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

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CR-4127-2024 (O&amp;M)

Date of decision: 01.09.2025

Saraswati

...Petitioner(s)

Vs.

Roshni Devi

...Respondent(s)

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Amit Jain, Advocate for the petitioner.

Mr. Himanshu Arora, Advocate for the respondent.

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**NIDHI GUPTA, J.**

Present Civil Revision Petition has been filed by the defendant under Article 227 of the Constitution of India for setting aside of the order dated 08.07.2024 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Gurugram; whereby application filed by the respondent/plaintiff under Order 6 Rule 17 CPC for amendment of the plaint (Annexure P-3), has been allowed.

2. It is *inter alia* submitted by learned counsel for the petitioner that the learned trial Court was in error in passing the impugned order as amendment of plaint has been allowed after commencement of trial, and after 5 plaintiff witnesses stood examined. Thus, order has been passed without application of judicious mind. Moreover, the amendment sought by the plaintiff would change the nature of the suit. The learned Civil Judge has



also not considered the aspect of due diligence. Thus, the impugned order is not a speaking order; and therefore, deserves to be set aside.

3. *Per contra*, learned counsel for the respondent/plaintiff opposes submissions of the petitioner and submits that by way of amendment only an ancillary relief was sought by the respondent which had come to her knowledge just prior to filing of the application for amendment. Moreover, the amendment sought by the respondent was germane to the dispute in hand. It is reiterated that the matter came to the knowledge of the plaintiff on 04.03.2024; whereafter application for amendment was moved promptly on 23.04.2024. It is accordingly contended that the impugned order suffers from no error, and the present petition deserves to be dismissed.

4. Heard.

5. I find merit in the submissions made on behalf of the petitioner. Brief facts of the case are that the plaintiff/respondent had filed a civil suit dated 04.07.2017 (Annexure P-1) for permanent and mandatory injunction. Defendant/Petitioner had filed written statement thereto on dated 01.04.2023 (Annexure P-2). Replication was filed by the plaintiff; whereafter issues were framed vide order dated 17.11.2023 in the matter. Thereafter, plaintiff evidence commenced on 19.12.2023 pursuant to which 5 plaintiff witnesses were examined. At this stage, instead of concluding plaintiff evidence, the present application for amendment of plaint was filed by the plaintiff on 23.04.2024 (Annexure P-3); which has been allowed vide the impugned order dated 08.07.2024 (Annexure P-6).



6. By way of the said application, the plaintiff had sought amendment in para 5A, 5B and 5C, cause of action, and prayer clause to lay challenge to the Mutation No. 7793 sanctioned in favour of the petitioner on the basis of Sale Deed No. 3748 dated 21.06.1999. The plaintiff accordingly sought a declaration that the said mutation did not create any title in favour of the defendant regarding the suit land. A further prayer was made that the said mutation and subsequent Jamabandis are liable to be set aside; and that on the basis of said Jamabandi entries, the defendant could not interfere in the possession of the plaintiff. Accordingly, relief of declaration was sought that the Mutation No. 7793 is illegal, null and void and subsequent entries in the Jamabandi on the basis of such mutation were also illegal, null and void. From a bare reading of the above, it is clear that the amendment sought by the plaintiff could not have been permitted as it would change the very nature of the suit. Originally, the plaintiff had filed suit seeking permanent and mandatory injunction. By way of the impugned amendment, the plaintiff was seeking a declaration that the impugned mutation and Jamabandis in favour of the Petitioner, were illegal, and void. The same cannot be permitted by way of amendment as it changes the fundamental character of the suit.

7. A perusal of the record of the case further reveals that respondent has failed to exercise due diligence.

8. Order 6 rule 17 CPC stipulates as follows: -

*“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. The proviso to the above provision is very clear. No amendment can be allowed after commencement of trial, unless the Court concludes that the party could not have raised the issue before commencement of trial, despite exercise of due diligence. This Court in ***"K.B. Sharma Vs. Shri Keerti Karan Dharni"*** (P&H) Law Finder Doc ID # **205192**, held that: -

*"A. Civil Procedure Code, 1908, Order 6, Rule 17, Proviso - Amendment of written statement - After the commencement of trial, amendment of pleadings cannot be allowed, until and unless, the party seeking amendment establishes that despite due diligence, it could not raise the pleas sought to be incorporated by way of amendment - Where defendant was already in knowledge of such pleas at the time of filing the original written statement - Amendment cannot be allowed."*

10. In the present case, the impugned order does not reflect any such conclusion by the Civil Judge. In fact, there is no mention of due diligence in the impugned order at all. Such a non-speaking order, reflecting



absolute non-application of judicious mind as also non-consideration of the provision, cannot be sustained.

11. The Hon'ble Supreme Court in ***Pandit Malhari Mahale v. Monika Pandit Mahale, (SC) : Law Finder Doc Id # 1691426*** has held that: -

*“Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Plaint - Amendment application filed after evidence begun - In absence of any finding that Court is satisfied in spite of due diligence, party could not introduce amendment before commencement of trial - Therefore, amendment of plaint unsustainable and set aside.”*

12. It may be pointed out that in the application dated 23.04.2024 (Annexure P-3), it has been pleaded that the said Mutation and Jamabandis came to the knowledge of the respondent through report dated 04.03.2024 of the Patwari and Tehsildar; whereupon cause of action arose in favour of the plaintiff. However, the said averments of the plaintiff do not ring true. The plaintiff has filed a suit for mandatory and permanent injunction. Needless to say, if the plaintiff had exercised due diligence, then prior to filing of the suit, the plaintiff would have checked and verified the revenue records; and would therefore, have discovered the mutation and Jamabandis now sought to be challenged by the plaintiff. However, plaintiff did not exercise due diligence and filed the suit without verifying status of suit land from the relevant revenue entries. It has been admitted by learned counsel for the respondent that this was not done. Thus, due diligence was not exercised by the plaintiff.



13. Furthermore, the impugned order shows that this aspect of the matter has not been considered at all by the learned trial Court while passing the impugned order. In such a situation, plaintiff could not have been permitted to amend the plaint. The learned trial Court has allowed the amendment only with a view to avoid multiplicity of proceedings while overlooking the fact that in doing so great prejudice would be caused to the petitioner as, as noted above, the amendment wreaks change in the fundamental nature of the suit. Besides, it can also not be ignored that the suit has been pending since the year 2017; and the application at hand, had been filed 7 years later; after commencement of trial; and after examination of 5 prosecution witnesses.

14. In the facts of the present case, it would be apposite to refer to recent judgment dated 29.2.2024 of the Hon'ble Supreme Court in ***Basavaraj v. Indira (SC) : Law Finder Doc Id # 2510571***; wherein it is held that: –

*“9. This Court in **M. Revanna v. Anjanamma (Dead) by legal representatives and others (2019) 4 SCC 332** opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below:*



*"7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money."*

*(emphasis supplied)*

*10. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.*

*11. This Court in Revajeetu's case (supra) enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice*



*to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.*

*12. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on account of delay in filing the application.”*

15. It is also necessary to point out that the record reveals that in fact, the plaintiff was well aware of the revenue entries; and in her plaint, the plaintiff has admitted the same to be correct. It would appear that by way of the present amendment, plaintiff is only seeking to withdraw the said admission made in the plaint.

16. In view of the above, present Civil Revision Petition is **allowed**; and the impugned order dated 08.07.2024 (Annexure P-6) is set aside.

17. Pending application, if any, stands disposed of.

**01.09.2025**

Divyanshi

**(NIDHI GUPTA)**

**JUDGE**

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