



2024:JKLHC-JMU:627

Sr. No. 18

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CM(M) No. 5/ 2023
CM No. 274/2023

**Khazan Singh, Age 74 years,
W/o Late Raj Singh,
R/o Lehar, Tehsil Akhnoor, District Jammu.**

....Petitioner

Through: Mr. P. S. Pawar, Advocate

Vs

- 1. Baldev Singh**
- 2. Karan Singh**
- 3. Jagdish Singh**
- 4. Khajoor Singh**
All sons of Late Magar Singh
All residents of Lehar Tehsil Akhnoor, District Jammu.

..... Respondents

Through: Respondent 1 present in person

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
15.03.2024

(Oral)

01. Order dated 09.01.2023 (for short "***the impugned order***")
passed by the Court of Munsiff Akhnoor (for short "***the Trial***
Court") in suit titled "***Khazan Singh Vs Baldev Singh and***



others” is under challenge in the instant petition, filed under Article 227 of the Constitution.

02. Facts giving rise to the filing of the instant petition are that a suit for permanent prohibitory injunction came to be filed by the plaintiff/petitioner herein against the defendants/respondents herein before the Trial Court pertaining to land measuring 9 kanals bearing Khasra No. 2903 situated at Village Sungal, Tehsil Akhnoor. In the written statements filed to the suit by the defendants/respondents herein, it came to be stated by the defendants/respondents herein that they are co-sharers of the land to the extent of 1/3rd of 58 kanals of land covered under Survey Nos. 2902 & 2903 along with their cousins, namely, Jaswant Singh and others and that the said land stands partitioned eight years back in equal shares amongst the co-sharers.

03. During the pendency of the suit, the plaintiff/petitioner herein filed an application seeking amendment of the suit in order to incorporate the land covered under Survey No.2902 making the total claimed land as 19 kanals and 6 marlas covered under both Khasra Nos. 2902 & 2903 on the ground that the counsel inadvertently failed to incorporate the land covered under Survey No. 2902 in the suit, despite the fact that the counsel had been informed and all the revenue papers furnished to him.



04. The Trial Court upon considering the application, after the defendants/respondents herein filed objections thereto, in terms of the impugned order rejected the application.

05. Impugned order dated 09.01.2023 is challenged in the petition, *inter-alia*, on the ground that the Trial Court in a mechanical and arbitrary manner passed the impugned order without applying the provisions of Order VI Rule 17 of CPC in strict sense and, thus, in the process caused miscarriage of justice.

Heard learned counsel for the petitioner as also the respondent 1 in person, who is stated to be holding the power of attorney on behalf of the defendants/respondents 2 to 4 herein for the purposes of case in question.

06. Before advertent to the issues raised in the petition, it would be appropriate to refer the Order VI Rule 17 of CPC, being relevant and germane to the controversy:-

“Order VI Rule 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.”

What emerges from above is that Rule 17 of Order VI CPC declares that 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. It also provides that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. Proviso, as added by the Code of Civil Procedure (Amendment) Act, 2002 to the provision supra, provides that no application for amendment should 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 (for which amendment is sought) before the commencement of the trial. The object of the Rule is that the courts should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side as ultimately, courts exist for doing justice between the parties and not for punishing them, and the Courts are empowered to grant amendment of pleadings in the larger interest of doing full and complete justice to the parties and the provisions for the amendment of pleadings are intended for promoting the ends of justice and not for defeating them.

A reference here to the judgment of the Apex Court passed in case titled as **“Mahila Ramkali Devi and others v. Nand Ram (dead) through legal representatives and others,”** reported in



(2015) 13 SCC 132, would also be relevant and germane herein, wherein following has been noticed: -

“It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleadings of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of cost.”

07. Having regard to the aforesaid position and principles of law and the case set up by the plaintiff/petitioner herein before the Trial Court in the application seeking amendment of the plaint, the Trial Court seemingly has overlooked the ambit and scope of the provisions of Order VI Rule 17 of CPC, inasmuch as, principles of law underlying thereof as laid down by the Apex Court in judgment supra.

In view of the aforesaid facts and circumstances of the case, denial of the amendment to the plaintiff/petitioner herein by the Trial Court in terms of the impugned would certainly result in multiplicity of litigation, which in law is against the scheme and object of the provisions of Order VI Rule 17 of CPC.



08. For the aforesaid reasons, the impugned order is held to be legally unsustainable. Resultantly, petition succeeds and consequently the impugned order dated 09.01.2023 is set aside and the application for amendment filed by the plaintiff/ petitioner herein before the Trial Court is allowed, subject to the payment of costs of Rs.5,000/- to be paid by the plaintiff/petitioner herein to the defendants/respondents herein within ten days' time from today. The Trial Court, accordingly, shall proceed in the matter in accordance with law.

Disposed of along with connected application.



(JAVED IQBAL WANI)
JUDGE

JAMMU
15.03.2024
Muneesh

Whether the order is reportable : **Yes**

Whether the order is speaking : **Yes**