

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

CR NO.3991 OF 2014
Date of Decision: 30.05.2014.

Manjit Singh ...Petitioner

V.

Parwati Devi and others ...Respondents

CORAM HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present Mr. Surinder Singh, Advocate
for the petitioner.

1. To be referred to the Reporter or not?
2. Whether the judgment should be reported in Digest?

RAJIV NARAIN RAINA, J (Oral)

The challenge in this revision petition filed under Article 227 of the Constitution is to the order declining prayers for amending the plaint. The amendment in the plaint prayed for by the petitioner was allowed by this Court in revisional jurisdiction vide order Annexure P1 and para 5-A was permitted to be inserted in the plaint. The averments in this paragraph were to the effect that "*the defendants have sold disputed property to defendant no.2 vide sale deed dated 31.05.2004 bearing Vasika no.815 which is illegal, non est, inoperative and is liable to be set aside.*" But there was more to it.

Learned counsel for the petitioner/plaintiff submits that when it came to the stage of tendering evidence by way of his affidavit, his earlier affidavit drafted in terms of the un-amended plaint was filed in Court

inadvertently without any thought paid to update it to meet the new challenge. In order to correct this gross mistake, an application (Annexure P/4) was moved before the learned trial Court supported by an affidavit explaining the mistake while craving leave of the Court to permit party to file a fresh affidavit incorporating new para 5-A as allowed by this Court and in addition thereto another typographical error was pointed out which occurred in para no.1 of the amended plaint that instead of swearing on affidavit that the father of the deponent had died on 28th January, 2001 this date should be read as the date of death of the father of Gurcharan Kaur which was a logical consequence. Learned counsel submits that the father of the deponent is alive and the mistake is one of a kind that requires to be permitted to be removed in the fresh affidavit presented to represent pleadings in opposition to the suit. This mistake is clearly typographical in nature and is an innocuous one resulting from lack of application of mind.

There was a third mistake in the affidavit which deserves to be corrected by allowing the same that "In all paras where the word deponent is written be written as word plaintiff i.e Gurbachan Kaur @ Bachan Kaur." This amendment is a natural consequence if the first prayer is allowed being contrary to facts as the petitioner's father is alive.

The learned Additional Civil Judge (Senior Division), Samrala by order dated 26th March, 2014 has thought it fit to reject the application. Learned trial Court has held that there is no provision in the CPC whereunder an affidavit of a witness can be amended. It was inter alia for such a contingency not provided for by the Code that Section 151, CPC was incorporated in the Code of Civil Procedure, 1908 at the turn of the 19th

century. Besides, Order 18 Rule 17 CPC would not abhor a better affidavit to be filed and accepted in order to avoid any any miscarriage of justice.

The learned trial Judge on the question of the amendments sought under Order 6 Rule 17 CPC has reasoned that the amendment of the pleadings is not the same thing as amending an affidavit of a witness which cannot be said to be pleadings or part thereof by any stretch of imagination. I would say that had the examination-in-chief been recorded in open Court as spoken by the witness, the matter would be different. If the amended code permits an affidavit to be accepted as examination-in-chief, mistakes can well occur and a more liberal approach needs to be adopted so that truth prevails and the real dispute between the parties goes to trial on real facts.

I find no reason to suspect any ill motive or oblique purpose or any trick played in the prayers made for amending the plaint and therefore allow this petition by setting aside the impugned order dated 26th March, 2014 (Annexure P/6). The amendments prayed for be allowed to be carried out in the affidavit. The fresh affidavit be now taken on record as the examination-in-chief by scrapping the first affidavit as a dead ball and the cross examination of the witness be conducted on the strength of the fresh affidavit in order to achieve the ends of justice.

(RAJIV NARAIN RAINA)
JUDGE

30.05.2014
mamta