
(2010) 08 P&H CK 0191
In the Punjab And Haryana At Chandigarh

Kuldeep Singh and Others

APPELLANT

Vs

Zile Singh and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 08 P&H CK 0191

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioners, by invoking supervisory jurisdiction of this Court, have challenged the order dated 20.7.2009 passed by the learned Additional District Judge, Kaithal, vide which the application moved by the petitioners for amendment of the plaint to correct the typographical error, stands declined.

2. The plaintiff/petitioners by claiming to be successors to Darab Singh, filed a suit for possession and also challenged the decree in favour of the defendant/respondents. Though, in the memorandum of parties, the name of the predecessor-in-interest of the plaintiff/petitioners was shown to be "Smt. Bhulli", however in para No. 4 of the plaint, while reproducing the pedigree table, the name of Smt. Bhulli was wrongly shown as "Smt. Bohti".

3. The suit filed by the plaintiff/petitioners was dismissed, as they failed to prove that they were related to Darab Singh.

4. In appeal, an application was moved for correction of typographical error in para No. 4. The learned lower appellate Court dismissed the application on the ground, that it would change the nature of the suit.

5. The finding of the learned lower appellate Court in rejecting the application under Order 6 Rule 17 of the CPC cannot be sustained. The proviso to Order 6

Rule 17 of the Code of Civil Procedure, as amended, is not applicable to the facts of this case, as the suit was filed prior to the amendment. If the proviso to Order 6 Rule 17 of the CPC is not taken into consideration, then the law of amendment is very liberal, and all the amendments, which are necessary for adjudication of the case, are to be allowed, unless valuable right accrues to the other party, and/or is to prejudicially affect the right. In all other cases opposite party can be compensated with costs.

6. The decree passed by the learned trial Court, is not based on the finding as to whether the petitioners were the sons of Smt. Bhulli or Smt. Bohti.

7. By allowing the amendment of the plaint to correct typographical error, no prejudice was likely to be caused to the defendant/respondents, specially when the learned Counsel for the petitioners stated at bar, that no evidence is to be led in support of the amendment.

8. For the reasons stated, revision petition is allowed, the impugned order is set aside, application moved by the petitioners for amendment of the plaint is allowed, with the condition, that the petitioner shall not be allowed to lead any evidence on account of this amendment.

9. This shall further be subject to payment of Rs. 5,000/- (Rupees five thousand only) as costs, for the inconvenience caused to the respondents.

10. In view of the fact that the appeal is pending since 2003, the learned Additional District Judge, Kaithal, is directed to decide the appeal within two months of the receipt of certified copy of this order.