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

CR No.3513 of 2015

Date of decision: May 20, 2015

Baljit and others

.....Petitioners

Versus

Bijender and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jagram Singh Cooner, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the order dated 21.04.2015, whereby application moved by the petitioners under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) for permission to amend the written statement and the counter claim, was dismissed.

Order 6 Rule 17 CPC 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.”

Thus, as per above provision, parties can be permitted to amend their pleadings before the commencement

of the trial. However, no application for amendment of pleadings shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, parties could not have raised the matter before the commencement of the trial.

Plaintiff has filed suit for permanent injunction. Plaintiff claimed himself to be the co-owner of the suit property in the capacity of a mortgagee. The suit was filed in May 2011, whereas, the written statement and the counter claim were filed by the petitioners on 07.03.2012. Thereafter, plaintiff closed his evidence on 14.11.2014. Defendants took three opportunities to lead their evidence and thereafter, moved an application for permission to amend the written statement and the counter claim. By way of amendment, petitioners want to incorporate that “the suit property is owned and possessed by Shamlat Panna Sehrawat and Shamlat Panna Sehrawat comprised of Thola Ram Chand Thola Kishna of Thola Badru Thola Hem Ran and the answering defendants and other persons of the above said Thola are the proprietors of Panna Sehrawat, so the proprietors of Panna Sehrawat and the above said Tholas alongwith answering defendants and other co-sharers are owner in possession of the suit property.” The plea now sought to be taken by the petitioners by way of amendment was in their knowledge at the time of filing of the written

statement and the counter claim. Since the trial had already commenced when the application under Order 6 Rule 17 CPC was filed by the petitioners, the application moved by the petitioners, was liable to be dismissed. Moreover, there is nothing on record to suggest that despite due diligence, the plea now sought to be taken by way of amendment, could not be taken up by the petitioners at the time of filing of the written statement and the counter claim. The learned trial Court had thus, rightly dismissed the application moved by the petitioners for permission to amend the written statement and the counter claim.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 20, 2015
m.singh