

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

1.

CR No.7890 of 2013
Date of Decision: 14.01.2015

Shashi

. . . .Petitioner

Versus

Mahesh Kumar

. . . . Respondents

2.

CR No.7940 of 2013

Balwan Singh and others

. . . .Petitioners

Versus

Rohtak Improvement Trust Rohtak and others

. . . . Respondents

3.

CR No.7891 of 2013

Balwan Singh and another

. . . .Petitioners

Versus

Rohtak Improvement Trust Rohtak and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

In CR No.7890 of 2013

Present: Mr.P.K. Gupta, Advocate,
for the petitioners.

Mr.Dinesh Arora, Advocate,
for the respondent.

In CR No.7940 of 2013

Present: Mr.P.K. Gupta, Advocate,
for the petitioners.

Mr.Dinesh Arora, Advocate,
for respondent No.1.

Mr.Rakesh Nehra, Advocate,
for respondents No.2 to 5 .

In CR No.7891 of 2013

Present: Mr.P.K. Gupta, Advocate,
for the petitioners.

Mr.Dinesh Arora, Advocate,
for respondent No.1.

Mr.Rakesh Nehra, Advocate,
for respondents No.2 to 5 and 7

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of three revision petitions bearing *CR No.7890 of 2013* [for short ‘the Ist petition’], *CR No.7940 of 2013* [for short ‘the IInd petition’] and *CR No.7891 of 2013* [for short ‘the IIIrd petition’]. However, the facts are being extracted from the Ist petition i.e. *CR No.7890 of 2013*. The common order is being passed because the learned counsel for the parties have stated at the Bar that in all the three cases, the impugned order is similar because in all the three cases, the plaintiff(s) has filed an application under Order 6 Rule 17 of the CPC seeking permission to amend the plaint.

Shorn of unnecessary details, the plaintiff has filed suit for declaration that she is the owner in occupation of the suit property and has challenged the decree dated 16.11.1996 as null

and void. The plaintiff has sought the amendment in the plaint only to the effect that the said decree dated 16.11.1996 has further been upheld by the Ist Appellate Court and in the Regular Second Appeal by this Court but inadvertently, the order passed in the appeal by this Court could not be challenged. The learned trial Court dismissed the application for amendment of the plaint, *inter alia*, on the ground that the suit was filed on 30.5.2007, issues were framed on 19.12.2012, two opportunities were availed by the petitioner for adducing evidence and when on the third date, the defendant(s) moved an application for dismissal of the suit on the ground of doctrine of merger of the decree, passed on 16.11.1996, with the decree passed by this Court which was not challenged, the present application has been filed for seeking amendment in the plaint.

Learned counsel for the petitioner has submitted that there are two parts of Order 6 Rule 17 of the CPC. The first part pertains to the amendment before the commencement of trial and the second part after the commencement of trial in which the applicant has to satisfy the Court that despite due diligence, the amendment could not be brought at the relevant time. Since, this case pertains to first part of Order 6 Rule 17 of the CPC as the trial Court has not commenced because no evidence has been led so far, therefore, it is submitted that the petitioner may be allowed to amend the plaint to challenge the decree of this Court also as it would not change the nature of the suit.

Learned counsel for the respondent has argued vehemently and contested the revision petition on the ground that the decree, which is sought to be challenged now, passed by this

Court having been rendered in the year 2006 would be barred by time as the amendment is being sought in the year 2013. It is also submitted that the plaintiff herself is delaying the suit as the issues were framed after 5 years of the filing of the suit and despite availing two opportunities, no evidence has been led by the plaintiff and that the plaintiff had the notice of the decree passed by this Court in the regular second appeal long back when the written statement was filed by the defendant(s). Therefore, on account of delay, the application has rightly been dismissed by the Court below.

After hearing learned counsel for the parties and examining the record with their able assistance, I am of the considered opinion that the order passed by the Court below deserves to be set aside though subject to payment of cost. As a matter of fact, the whole case of the petitioner is that the decree passed on 16.11.1996 is null and void and the said decree has been upheld upto this Court when the regular second appeal was dismissed in the year 2006. Although, the petitioner knew about the fact of the dismissal of the regular second appeal by this Court from the written statement filed by the defendant(s)/respondent(s), yet she did not make any effort to file application to amend the plaint but the fact remains that the application has been filed at this stage when the trial has not commenced and with the amendment of the suit to challenge the decree passed by this Court also, would not bring any change in its nature and the suit would remain the same as the decree, which has already been challenged in the year 1996, has already been merged in the decree passed by this Court in the regular second appeal.

In view thereof, the present revision petition is hereby allowed subject to payment of costs of ₹10,000/-, which shall be paid to the respondents, by way of demand draft, in equal proportion in each case.

14.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE