

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

CR No.4565 of 2014
Date of decision : 13.12.2016

Jaimal and others

...Petitioners

Versus

Uttamjit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Mahavir Sandhu, Advocate for the petitioners.

Mr. Wazir Singh, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The petitioners-defendants are aggrieved of the dismissal of the application by the trial Court for the amendment of the written statement by incorporating the alternative plea of adverse possession by incorporating the following preliminary objection No.3:-

“That the defendants are in occupation of the property since 1966 and the same is being corroborated by the revenue record, but in the remarks column there is no reference regarding the payment of 1/3rd batai and due to this reasons the defendants' apprehend that since in the remarks column there is no reference of payment of batai then in that eventuality the defendants cannot get the status of a tenant on the land in dispute and due to this technicality of law, if they are not in a position to prove their tenancy then certainly they are in occupation of the

land in dispute since 1966 to the very knowledge of the plaintiffs and their predecessor-in-interest. Due to the technicality of law if it is held that the defendants are not in occupation of the property as tenants, then in that eventuality the defendants should be allowed to take the plea of adverse possession since they are in occupation of the land in dispute since 1966 to the very knowledge of the plaintiffs and their predecessor-in-interest. Thus their possession over the suit land would be considered to be hostile, peaceful, without any right to the very knowledge of the plaintiffs and have ripened into adverse possession.”

Mr. Mahavir Sandhu, learned counsel appearing on behalf of petitioners-defendants submits that respondent-plaintiff had instituted the suit for possession and consequential relief of permanent injunction and stand taken in the written statement was that the petitioners-defendants are tenant on 1/3rd batai since time of forefather and had been paying the batai regularly. During the cross-examination, the plaintiff denied the aforementioned fact and realize that in case the aforementioned plea is not taken, plea of adverse possession would be sustainable.

He submits that mutual destructive plea is available in view of law laid down by Hon'ble Supreme Court in *Basavan Jaggu Dhobi Vs. Sukhnandan Ramdas Chaudhary*, 1995 Supp (3) Supreme Court Cases 179, reiterated by many other judgment.

Mr. Wazir Singh, learned counsel appearing on behalf of respondent-plaintiff submits that amendment sought is not permissible as per the amended provision of Code of Civil Procedure. The aforementioned plea was available with them but they failed to avail the same, which is

nothing but an adoption of delaying tactics. Plaintiff's evidence has already been commenced and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that destructive plea can be taken. No doubt, objection could have been taken in the first instance but still cannot be said to be too late in a day when the plaintiff is leading the evidence.

With the aforementioned observations, application for amendment is allowed as the respondent-plaintiffs will have opportunity to cross-examine the defendants. Parameters for allowing the amendment of plaint and written statement are totally different. In view of the fact that approach of petitioners-defendants had been lackadaisical and tardy, I intend to impose a cost of ₹5500/- to be paid to the counsel for the respondents in the High Court.

Impugned order is set aside.

Application for amendment is allowed.

Accordingly, revision petition is allowed.

13.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No