

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

**CR No.4990 of 2016 (O&M)
Decided on: 04.08.2016**

Aman Pal Singh and others

....Petitioners

Versus

Randhir Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Munish Gupta, Advocate
for the petitioners.

REKHA MITTAL, J.

The present petition has been directed against order dated 20.05.2016 (Annexure P-4) passed by the Civil Judge (Jr. Division), Assandh whereby application filed by the petitioners/plaintiffs for amendment of the plaint by invoking Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') has been dismissed.

The petitioners have staked their claim for declaration and possession with consequential relief of permanent injunction primarily on the plea that mutation of inheritance of Choto Devi bearing No.2582 entered and sanctioned in favour of Daulat, Nar Singh sons of Bakhtawar, Ranbir, Raj Kanwar on the basis of false statement allegedly made in *Jalsa Aam* (public gathering) is illegal as the same was required to be sanctioned in favour of Ganga Devi, daughter of Choto Devi (since deceased) being the only class one heir of the erstwhile owner of suit property namely Choto Devi.

The instant application was filed in order to make addition in para No.6 of the plaint by alleging that after marriage of Ganga Devi,

her in-laws changed her name as Bhateri and she was known as Ganga Devi @ Bhateri. After sometime of her marriage, Ganga Devi came back to village Salwan and started residing with her mother Choto Devi as there was no one to take care of her mother. After death of Choto Devi in the year 1952, Ganga Devi resided in village Salwan and used to visit her matrimonial home in village Kansipur District Saharanpur.

The learned trial Court after seeking reply to the application and having heard counsel for the parties dismissed the application primarily on two grounds that there is no explanation as to why the facts sought to be pleaded by way of amendment were not incorporated in the original plaint despite exercise of due diligence and the said facts are not at all affecting merits of the case in any manner. Further, it has been noticed that the fact that Ganga Devi had lived in village Salwan as mentioned in the affidavit filed by plaintiff – Aman Pal is a matter of evidence, not required to be pleaded in the plaint.

Counsel for the petitioners has submitted that though the application for amendment has been filed after commencement of the trial but the proposed amendment will neither change nature of the suit nor would cause prejudice to the contesting respondents for which they cannot be compensated with costs. It is further argued that the learned trial Court while disposing of the application has even entered into arena of merits of the controversy and has discussed if Ganga Devi had any right to inherit to Choto Devi allegedly being the daughter in view of the law of inheritance in vogue prior to the Hindu Succession Act, 1956 came into force. It is argued with vehemence that a serious

prejudice is likely to be caused to the petitioner in case the observations made by the trial Court in regard to right of inheritance of Ganga Devi are not set-aside.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned.

At the outset, it is pertinent to mention that it has been repeatedly held by the Courts that the trial Court or Court of appeal should refrain from commenting upon merits of the case while deciding interlocutory applications. A plain reading of the impugned order would make it evident that the observations made by the trial Court with regard to right of inheritance of Ganga Devi was neither necessary nor otherwise warranted for disposal of the question of entitlement of the petitioners to seek amendment of the plaint or otherwise. In this view of the matter, any observations made by the trial Court in the impugned order touching merits of the case would not cause prejudice to either of the parties at the time of final disposal of the suit.

Amanpal Singh and others have claimed themselves to be sons of Smt. Ganga Devi, alleged to be daughter of Smt. Choto Devi wife of Dhara. As has been rightly held by the trial Court, the basic dispute between the parties is as to whether Ganga Devi was the daughter of Smt. Choto Devi. The evidence by which the said fact is to be proved by the petitioners is not required to be pleaded in the plaint. Counsel for the petitioners is not in a position to convince this Court as to how the proposed amendment is necessary for complete and effective adjudication of the real dispute raised in the suit. This apart, there is no

explanation at all as to why the facts sought to be pleaded by way of amendment were not incorporated in the original plaint despite exercise of due diligence to satisfy one of the requirements of proviso appended to Rule 17 by way of amendment in the year 2002. I would hasten to add that this Court is not oblivious of the fact that mere delay in filing the application for amendment or failure to satisfy the requirements of proviso may not be sufficient to dismiss the application if the application otherwise satisfies the other guiding principles laid down by Hon'ble the Supreme Court in *“Revajeetu Builders & Developers vs Narayanaswamy & Sons & Others”*, 2010(1) RCR (Civil) 27.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed.

04.08.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No