

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

CR No. 5156 of 2016(O&M)

Decided on.16.08.2016.

Jaswant

.....Petitioner

Versus

Attar Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. N.K.Malhotra, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 27.01.2016 passed by the learned Addl. District Judge (Rohtak), vide which the application moved by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short C.P.C.) for amendment of the written statement at the appellate stage has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner was represented in the learned trial Court by Sh. Ashok Deswal, Advocate. The entire facts were disclosed to him. But, inadvertently some detailed facts could not be given in the written statement. He contended that now, the petitioner wants to make the amendment in the written statement to take the plea that the petitioner has become owner of the land in dispute by way of adverse possession. He has orally purchased the land in dispute from Udai Singh even before the purchase of the land by the plaintiff-respondent. The petitioner has even constructed the house in the year 1980. Whereas, the plaintiff-respondent has become the owner of the property in dispute in the year 2009. He contended that the pleading of all

these facts are essential to adjudicate upon the controversy involved in the suit. Thus, he pleaded that the learned First Appellate Court has wrongly dismissed the application.

3. I have duly considered the aforesaid contentions.

4. The petitioner has moved the application for amendment of the written statement at the appellate stage. He wants to amend the written statement to introduce the facts that in-fact plot No. 16 measuring 444 sq. yards situated in village Nigana was purchased by Udal Singh in an open auction held on 10.03.1978 from Custodian Department and Udal Singh orally sold the said plot to the petitioner in August 1980. He has also constructed the house-cum-Gher on the said property. Some portion of Killa no. 47/7/2 was included while constructed the house by the petitioner and now he has become the owner of the same by way of adverse possession. The petitioner has tried to explain the non pleading these facts in the original written statement that the entire facts were disclosed to Sh. Ashok Deswal, Advocate, who was representing the petitioner in the learned trial Court, but he inadvertently could not mention these facts in the written statement.

5. There is no dispute with the proposition of law that the amendment of pleadings can be permitted at any stage in order to determine the real controversy involved in the case. The law regarding amendment of the written statement is more liberal as compared to the amendment of the plaint. But, at the same time, the amendment of the pleadings cannot be permitted to substantially change the nature of the case. In the original written statement, the stand of the petitioner was that he has orally purchased the suit property from Udal Singh. But, now he wants to take the plea that he has become the owner of the property in

dispute by way of adverse possession. Both these pleas are mutually inconsistent. The learned trial Court has also observed that even the basic ingredients of the adverse possession have not been mentioned in the application for amendment of the written statement. No particular date has been mentioned when his hostile possession started and against whom he was proclaiming his adverse possession.

6. The explanation given by the petitioner that all the facts could not be mentioned inadvertently by his counsel in the learned trial Court also has no substance as the petitioner has contested the suit throughout in the learned trial Court on the basis of the original written statement. He has even led the evidence by way of his affidavit taking the same stand as in the original written statement. At no stage of the suit, the appellant had raised the issue regarding any deficiency in the written statement. Moreover, the plea which the petitioner wants to raise now by way of amendment of the written statement was very much in the knowledge of the petitioner from very beginning and he has not made any endeavour to seek amendment of the written statement before the commencement of the trial or even during the trial.

7. The proposed amendment will alter substantially the nature of the case. If, this amendment is allowed, the *denovo* trial may be required as evidence has also to be led to prove the plea sought to be raised by way of proposed amendment which will result in serious prejudice to the opposite party who proved to be successful in the suit before the learned trial Court. Moreover, the learned First Appellate Court has categorically observed that the proposed amendment is not essential to resolve the matter involved in the case. Thus, the petitioner has not been able to make out a case to seek amendment in the written statement at the

appellate stage.

8. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order passed by the learned First Appellate Court, which does not call for any interference by this Court.

9. Therefore, the present revision petition having no merits, is hereby dismissed.

16.08.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No