

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

**CR No.5986 of 2015 (O&M)
Decided on: 29.02.2016**

Sushma Devi and others

....Petitioners

Versus

Janeshwar Dass

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present: Mr. S.S. Kharb, Advocate
for the petitioners.

Mr. J.S. Saneta, Advocate
for the respondent.

REKHA MITTAL J. (Oral)

The present petition has been directed against order dated 17.08.2015 passed by the Additional Civil Judge (Senior Division), Samalkha, dismissing an application filed by the petitioners/plaintiffs for amendment of the plaint.

Counsel for the petitioners would contend that the petitioners have filed a suit for possession in respect of agricultural land detailed in headnote of the plaint by way of redemption of mortgage on payment of mortgage money to the tune of Rs.24,000/- as per mortgage deeds Vasika Nos.1977/1 dated 12.06.1981 and No.3052 dated 04.08.1982. The petitioners filed an application for amendment of the plaint by invoking Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (in short 'CPC') and the amendment sought is incorporated in sub paras (A)

to (D) of para 2 of the application (Annexure P-2). The application was filed before commencement of trial and even prior to the respondent having submitted his defence. It is argued that the petitioners limit their claim for amendment only *qua* sub paras (A) and (D) of para 2 of the application to change the suit for possession to that of suit for symbolic possession and consequently from a decree for possession to that of a decree for symbolic possession. It is vehemently argued that no prejudice would be caused to the respondent in case the proposed amendment is allowed when otherwise an amendment can be allowed by a Court at any stage of the proceedings and even by an Appellate Court.

Counsel for the respondent while refuting contentions of the petitioners would urge that the learned trial Court has rightly dismissed the application and no intervention in exercise of supervisory jurisdiction by this Court is warranted in the circumstances. It is further submitted that as a matter of fact, the respondent is in possession of suit land and the petitioners by seeking amendment want to give an impression that they are in actual possession of the land in question.

I have heard counsel for the parties and perused the records.

It is an admitted position of the case that the application for amendment of the plaint was filed at the very initial

stage of the proceedings as the written statement by the respondent/defendant was yet to be filed. There cannot be any dispute about the settled position in law that amendment of pleadings can be allowed at any stage but subject to the condition that the proposed amendment is necessary for complete and effective adjudication of the matter in controversy. The petitioners have canvassed their claim for amendment only *qua* headnote of the plaint and prayer clause to convert plea of possession into that of symbolic possession. At the stage of allowing amendment of the pleadings, the Court is not required to examine merits of the facts sought to be incorporated by way of amendment. No prejudice would be caused to the respondent in case the proposed amendment is allowed because in case the petitioners fail to prove that they are in possession of the suit land, their suit may fail for want of relief of possession.

In view of the above, prayer of the petitioners for amendment to the extent of sub paras (A) and (D) of para 2 of the application can be allowed. As a consequence, the petition is allowed, the impugned order is set-aside and the application filed by the petitioners for amendment of the plaint is allowed in the aforesaid terms.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

29.02.2016
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