

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

Civil Revision No.6710 of 2016

Date of decision : 06.10.2016

Harbilas (deceased) through LRs.

.....Petitioners

Versus

Balbir Singh

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. C.L. Sharma, Advocate for petitioners.

DARSHAN SINGH, J.

The present petition has been preferred by the petitioners-defendants against the order dated 31.08.2016 passed by learned Additional District Judge, Hoshiarpur, vide which the application moved by them under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short "CPC") for amendment of the written statement at the appellate stage, has been dismissed.

2. Learned counsel for the petitioners contended that the petitioners only want to incorporate the additional/alternative plea in the written statement. They want to plead that deceased defendant Harbilas was a permanent licensee and had made the valuable construction of permanent nature in the suit property with the consent of the plaintiff and other proprietors of the village. He contended that the aforesaid plea could not be raised at the time of filing the original written statement as they were not given the proper legal advise. Thus, learned counsel for the petitioners

contended that the aforesaid amendment is essential to determine the real question in controversy between the parties and the learned First Appellate Court has wrongly dismissed the application.

3. I have duly considered the aforesaid contentions.

4. The respondent-plaintiff has filed the suit for possession by ejectment of the defendant from the suit property by removal of all kind of super structure on the plea that the suit property was jointly owned by the plaintiff with the persons mentioned in the revenue record. It was pleaded that the defendant was in permissive possession of the suit property in consideration of supply of cattle manure to the owners of the suit land. The said suit was contested by the defendant on the plea that he is in continuous, peaceful, open and notorious possession over the suit property even before the partition of the country and the entries in the revenue record are wrong. So, the defendant was claiming ownership qua the suit property by way of adverse possession.

5. The suit filed by the respondent-plaintiff Balbir Singh was decreed by the learned trial Court vide judgment and decree dated 04.07.2013. The legal representatives of deceased defendant Harbilas have preferred the appeal and during the pendency of said appeal this application for amendment of written statement was moved. By way of amendment, the petitioners want to raise the alternative plea that defendant was permanent licensee and has made the valuable construction of permanent nature over the suit property with the consent of the plaintiff and other proprietor of the village. Earlier their father was a licensee who raised some construction

and after his death the defendant was the permanent licensee and has raised the permanent construction. So, he cannot be ejected or dispossessed. Proviso to Order 6 Rule 17 CPC provides that no application for amendment shall be allowed after the trial had commenced unless the Court comes to the conclusion that in spite of due diligence the parties could not raise the matter before the commencement of the trial. In the instant case, in order to meet out the aforesaid provision of law, the petitioners have simply pleaded that the said plea could not be raised as there was no proper legal advise. It is very easy to put the blame on the counsel to meet out its own default by the parties to the *lis*.

6. In the original written statement the plea has been raised by the defendant that he is in adverse possession of the suit property. By way of proposed amendment, he wants to raise the plea that he is a licensee over the suit property. Both these pleas are mutually destructive and inconsistent. This type of plea cannot be allowed to be raised at the belated stage of appeal. The suit was filed by the plaintiff on 09.04.2008 and was decided on 04.07.2013 so the suit had remained pending for a period of more than 5 years. The present appeal has been filed by the petitioners on 19.08.2013 and the application for amendment of the written statement has been filed on 17.07.2015 during the pendency of the appeal *i.e.* virtually after two years from the date of filing the appeal. The plea of licensee is not such a plea which could not be earlier in the knowledge of the petitioners. Thus, it appears that the present application has only been moved by the petitioners to wriggle out of the observations of the learned trial Court. Consequently,

the application moved by the petitioners is not *bona fide*.

7. Thus, keeping in view my aforesaid discussion, I do not find any legal infirmity in the order passed by the learned trial Court. Therefore, the present revision petition is without any merit and the same is hereby dismissed.

06.10.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No