

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

Civil Revision No.6756 of 2016

Date of decision : 06.10.2016

Som Nath and others

.....Petitioners

Versus

Municipal Corporation and another

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Sanjay Verma, Advocate for petitioners.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 23.08.2016 passed by learned Civil Judge (Junior Division), Jagadhri, vide which the application moved by the petitioners-plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”) for amendment of plaint, has been dismissed.

2. Learned counsel for the petitioners contended that on the basis of the judgment dated 28.02.1974 passed by the learned Sub Judge, Jagadhri mutations No.138 and 139 were sanctioned. In the plaint filed by the petitioners-plaintiffs reference of only mutation No.138 had been given. Mutation No.139 was not in the knowledge of the petitioners. They had now come to know about the said mutation and they want to amend the plaint to mention about the said mutation No.139 in the plaint. He contended that in case the amendment is allowed, the petitioners will not led any fresh evidence and the suit can be decided on the basis of evidence already led.

3. I have duly considered the aforesaid contentions.

4. The petitioners-plaintiffs have filed the suit for mandatory injunction directing respondent No.2, the Assistant Collector IInd Grade, Jagadhri to change/revert back/correct the entries in the Jamabandies for the year 2006-07 and subsequent revenue entries with respect to the suit property. The said suit was filed by the petitioners on 14.02.2013. The application for amendment of plaint has been moved on 15.01.2016. The copy of mutation No.139 produced by the learned counsel for the petitioners at the time of arguments was obtained by petitioner Som Nath on 18.11.2012, whereas the suit has been filed on 14.02.2013. Thus, the averment in the application that the petitioners-plaintiffs had no knowledge about mutation No.139 is factually incorrect. This fact is not disputed that now the suit is fixed at the stage of the evidence of the defendants. As per the proviso to Order 6 Rule 17 CPC, no application for amendment shall be allowed after the trial has commenced unless the Court has come to the conclusion that in spite of due diligence the parties could not raise the matter before commencement of the trial. The petitioners-plaintiffs instead of coming forward with a plausible and reasonable explanation for non-pleading the facts regarding mutation No.139 in the plaint, have come forward with factual incorrect plea to the knowledge of the petitioners as they had obtained the copy of mutation No.139 even before the filing of the suit. So, the application moved by the petitioners-plaintiffs for amendment of plaint cannot be stated to be *bona fide* and also does not meet out the conditions mentioned in the proviso to Order 6 Rule 17 CPC.

5. Thus, keeping in view my aforesaid discussion, I do not find any legal infirmity in the order passed by the learned trial Court. Thus, 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