

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

CR No.100 of 2017.

Date of Decision: 12.01.2017.

Prem Sagar and another

....Petitioners.

VERSUS

Gulab and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

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

SNEH PRASHAR, J.

This revision petition is directed against the order dated 02.12.2016 passed by learned Civil Judge (Junior Division), Shahabad allowing the application under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC") filed by the respondents-plaintiffs for amendment of the plaint.

The facts which need to be referred are that a suit for redemption and possession of land measuring 05 Kanals 19 Marlas, situated at village Kalsana, Tehsil Shahabad, District Kurukshetra was filed by the respondents-plaintiffs. After the petitioners-defendants appeared in response to the notice of the suit, they filed written statement raising various preliminary objections and denying the averments of the respondents. Thereafter, the respondents filed an application under Order VI Rule 17 CPC praying for amendment of certain clerical mistakes in the pleadings.

The petitioners-defendants resisted the application. Considering the rival contentions of the parties and the submissions made on their behalf, learned trial Court finding the amendment to be just correction of clerical mistakes, allowed the application. Aggrieved against the said order, the petitioners-defendants have filed the instant petition.

The submissions made by Mr. Madan Gupta, learned counsel for the petitioners have been considered.

Learned counsel for the petitioners argued that in Para No.1 of the plaint filed by the respondents they pleaded that Tungal, Basawan and Kartara sons of Bir Singh, residents of village Kalsana, Tehsil Shahabad, District Kurukshetra mortgaged land measuring 03 Bighas 14 Biswas with Lachhman Dass son of Hira, caste Brahman Gaur, resident of village Kalsana entered in Khewat No.540/537, Khatoni No.1142, Khasra No.433 for a sum of Rs.49/- vide Jamabandi for the year 1928-1929. In the written statement filed by the petitioners the said averment of the respondents was altogether denied and it was specifically pleaded that Tungal etc. had never mortgaged the land in question. Now by way of amendment, the respondents intend to plead that the land was mortgaged with Balak Dass Chela Harnam Dass, Faquir Bairagi Sakan Deh, Kalsana for an amount of Rs.49/- and subsequently said Balak Dass Chela Harnam Dass mortgaged the land with Lachhman Dass son of Hira of village Kalsana. Learned counsel asserted that the above amendment sought in the pleadings is not of clerical nature, rather, it changes the entire nature of the suit.

The arguments of learned counsel for the petitioners appear to be devoid of merit. No substantial change in the pleadings was sought by the respondents by way of application for amendment filed by them. The

amendment is only of explanatory nature as initially the respondents pleaded that Tungal, Basawan and Kartara sons of Bir Singh mortgaged the land with Lachhman Dass, but now by way of amendment they intend to plead that the land was mortgaged by the said persons firstly with Balak Dass Chela Harnam Dass and subsequently said Balak Dass Chela Harnam Dass mortgaged the property with Lachhman Dass son of Hira. With such amendment of explanatory nature neither the nature of the suit will be changed nor it will cause any prejudice to the rights of the petitioners who in their written statement had denied mortgage of the suit property as alleged by the respondents-plaintiffs. With the amendment in the pleadings, the petitioners will get a right to file an amended written statement.

The case was still at the initial stage. Issues on the rival pleadings of the parties had not been framed so far. Neither any new or contrary plea was raised by way of amendment nor the nature of the suit or the cause of action pleaded was sought to be amended.

For the reasons aforesaid, finding that the impugned order of learned trial Court does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the revision petition being bereft of merit is dismissed.

(SNEH PRASHAR)
JUDGE

12.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **No**