

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

CR No.1101 of 2017.

Date of Decision: 15.02.2017.

Gurbax Kaur and another

....Petitioners.

VERSUS

Bachan Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Akshita Chauhan, Advocate for the petitioners.

SNEH PRASHAR, J.

Assailing the order dated 18.01.2017 by virtue of which an application under Order VI Rule 17 read with Section 151 of the Civil Procedure Code filed by the petitioners was dismissed by learned trial Court, the instant petition has been filed.

The submissions made by Mr. D.V. Sharma, learned Senior counsel for the petitioners have been considered.

Learned Senior counsel argued that the petitioners-plaintiffs filed a suit for declaration claiming ownership and possession to the extent of 2/5th share in the land measuring 251 Kanals 05 Marla, situated in village Shahla Nagar, Tehsil Shahkot, District Jalandhar on the basis of natural inheritance being class-I legal heirs of deceased Gurdit Singh. They challenged the mutations sanctioned in favour of the defendants and also

contested the suit. During pendency of the suit, the respondents filed an application for amendment of the written statement which was contested by the petitioners, but ultimately by order of this Court the amendment was allowed, subject to payment of costs. After amendment, the defendants led evidence and proved certain sale deeds showing that the land which was subject matter of the said sale deeds had been purchased by deceased Gurdit Singh and was his self acquired property and he was competent to execute a will in respect of the same. In the light of the said sale deeds the petitioners filed an application for amendment in the plaint. It was due to clerical mistake and oversight that the suit land was mentioned as 251 Kanals 05 Marlas whereas the correct area of the land is 141 Kanals 01 Marla covered by the Khasra numbers as mentioned in the application for amendment. Learned counsel contends that the amendment in pleadings would neither require a fresh issue to be framed nor there would be any necessity for leading additional evidence. The order passed by learned trial Court dismissing the application for amendment is illegal and not sustainable.

The arguments of learned counsel for the petitioners may appear to be attractive but are devoid of merit. As is apparent from the impugned order, the suit was filed on 09.10.2007. After ten years of long litigation when the case was fixed for arguments, the plaintiffs filed the present application for amendment in the pleadings in order to change the subject matter of the suit.

With a view to put an end to the practice of filing application for amendment of pleadings belatedly, a proviso was added to Order VI Rule 17 which reads as under:-

of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The trial commences when the Court applies its judicial mind to the rival contentions of the parties, determines the contentious issues between them and calls them to adduce evidence in support of the same. It has been held by Apex Court in **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** that amendment in pleadings cannot be allowed after the trial had commenced. This Court also in **Jaspal Kaur and another vs. Mohinder Singh and others, 2014(9) R.C.R. (Civil) 2935** has held that in view of proviso to Order VI Rule 17 CPC, the amendment of pleadings cannot be allowed unless the party seeking amendment could not have raised the matter before commencement of the trial in spite of exercise of due diligence.

The proviso to Order VI Rule 17 CPC is in a mandatory form. The jurisdiction of the Court to allow an application for amendment after the trial had commenced had been taken away unless the conditions precedent thereof are satisfied viz the Court must come to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

In the case in hand, it is not just after commencement of the trial but at the fag end when the suit had come up for submission of arguments by the parties for disposal of the case that the instant application for amendment had been filed by the petitioners. No reason has been explained for such long delay in filing the application.

In addition to the above, it is important to note that by way of amendment the petitioners almost intend to change the entire subject matter of the case. In the pleadings of the petitioners, the details of the suit land for its identification were based on Jamabandi for the year 2004-2005. However, by way of amendment the petitioners intend to change the very base of their claim by pleading particulars of the suit land on the basis of Jamabandi for the year 1984-1985. There is nothing to indicate that despite due diligence the plaintiffs could not earlier plead the facts/ mention details of the suit land which they now intend to incorporate by way of amendment.

In the above premise, finding no illegality or perversity in the order of learned trial Court dismissing the application for amendment in the pleadings by petitioners-plaintiffs and there being no ground for intervention by this Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

15.02.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**