

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

CR No.1137 of 2017 (O&M).

Date of Decision: 16.02.2017.

Jagjit Singh and another

....Petitioners.

VERSUS

Raj Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ranjan Lakhanpal, Advocate for the petitioners.

SNEH PRASHAR, J.

CM-3398-CII-2017

Allowed, as prayed for.

CR-1137-2017

The petitioner is aggrieved of the order dated 27.10.2016 passed by learned Civil Judge (Junior Division), Bathinda dismissing the application filed by him under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC") for amendment in pleadings.

The submissions made by Mr. Ranjan Lakhanpal, learned counsel for the petitioners have been considered.

Learned counsel submits that when the suit for declaration and permanent injunction filed by the petitioners was fixed for their evidence, one Kartar Singh son of Jhanda Singh handed over to them a will dated 11.03.1979 executed by Sunder Singh bequeathing his property in favour of his wife Sant Kaur and his sons Jagjit Singh and Malkiat Singh (petitioners-

plaintiffs). On coming to know about the said will, the petitioners-plaintiffs moved an application under Order VI Rule 17 CPC seeking amendment in the plaint, but the application for amendment filed by the petitioners was dismissed by learned trial Court on erroneous grounds vide the impugned order dated 27.10.2016. Learned counsel contends that pleadings with regard to the will are important for proper and complete adjudication of the rights of the parties.

There appears no merit in the arguments of learned counsel for the petitioners. 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:-

“17. Amendment of pleadings— The Court may at any stage 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.

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 instant case, as mentioned in the impugned order by learned trial Court, the petitioners filed the instant suit for declaration and permanent injunction in the year 2011 claiming their ownership and possession to the extent of 1/2 share in the suit land on the basis of will dated 13.04.1978 executed by their father Sunder Singh. On 28.10.2014 the case came up for evidence of the petitioners. Some of the witnesses of the petitioners were examined and cross examined by the respondents-defendants. After availing numerous opportunities for adducing their evidence, the petitioners by way of amendment want to set up a will dated 11.03.1979, which they allege has been handed over to them by their first cousin Kartar Singh son of Jhanda Singh. The amendment sought is targeted to change the entire nature of the suit. After already spending more than six years in litigation the amendment would lead to denovo of the trial.

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

16.02.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**