

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

CR No.2213 of 2017.

Date of Decision: 05.04.2017.

Kuldeep Singh and anotherPetitioners.

VERSUS

Surjit Kaur and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. L.S. Sidhu, Advocate for the petitioners.

SNEH PRASHAR, J.

Aggrieved of the order dated 20.01.2017 passed by learned Additional Civil Judge (Senior Division), Mansa by virtue of which the application filed by the petitioners-plaintiffs under Order I Rule 10 and Order VI Rule 17 of the Civil Procedure Code (for short, 'the Code') was dismissed, the petitioners have preferred the instant Civil Revision Petition under Article 227 of the Constitution of India.

The submissions made Mr. L.S. Sidhu, learned counsel representing the petitioners have been heard.

Learned counsel for the petitioners argued that the property in question was initially owned by three brothers namely, Nirmal Singh, Gurbachan Singh and Gurnam Singh sons of Sher Singh in equal shares and their fourth brother Balwinder Singh and his wife Jasvir Kaur had no share in the suit property and therefore, as no relief was to be claimed against them, they were not impleaded as party to the suit. When the case was fixed

for defendants' evidence, Sukhwinder Singh son of Gurbachan Singh

(defendant No.2) stepped into the witness box and in his statement made in the form of affidavit Ex.DW3/A, he stated that out of the suit property, 117 square yards land was alienated by Balwinder Singh in favour of his wife Jasvir Kaur by executing a deed of transfer of ownership bearing registration No.2874 dated 31.08.2007. Since the suit filed by the petitioners-plaintiffs is for possession by way of partition of the suit property as they had purchased 1/3rd share in the suit property from Gurnam Singh son of Sher Singh vide registered sale deed dated 09.08.2011 and in that manner had become owners to the extent of 1/3rd share in the suit property, impleading of Balwinder Singh and Jasvir Kaur in the light of the transfer deed dated 31.08.2007 proved by Sukhwinder Singh (defendant No.2) during his deposition had become necessary. Accordingly, the petitioners-plaintiffs filed an application under Order I Rule 10 and Order VI Rule 17 of the Code, but learned trial court illegally dismissed the application.

The facts in the backdrop of the application filed by the petitioners for impleading Balwinder Singh and Jasvir Kaur as party to the suit and for amendment of the plaint accordingly, are not the same as pleaded by the petitioners in their petition. It was wrongly alleged by the petitioners in their application as well as in the averments in the present petition that they learnt about the deed of transfer of ownership dated 31.08.2007 executed by Balwinder Singh in favour of his wife Jasvir Kaur from the affidavit tendered by respondent-Sukhwinder Singh as his examination-in-chief when he appeared in the witness box. Learned trial Court mentioned in the impugned order and is also mentioned in Para No.2

to 5, they had categorically pleaded that Balwinder Singh had transferred 117 square yards (15 x 69.5 sq. feet) out of the land in question falling to his share in favour of his wife Jasvir Kaur vide transfer of ownership deed No.2874 dated 31.08.2007. They also mentioned that the boundaries of the transferred land stand mentioned in the deed of transfer of ownership. Meaning thereby that in the written statement, which was filed by respondents No.1 to 5 on 25.04.2014, the factum of transfer deed was pleaded with complete particulars of the registered document by the respondents-defendants. However, the petitioners did not opt to implead Balwinder Singh and his wife Jasvir Kaur as party to the suit. As indicated in the impugned order, on the rival contentions of the parties, learned trial Court framed issues on 25.08.2014. The petitioners produced their evidence and closed the same on 16.10.2015. The defendants also examined their witnesses and it is thereafter that the petitioners-plaintiffs filed the instant application for amendment in the plaint and for impleading Balwinder Singh and his wife Jasvir Kaur as party to 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 of the Code 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. 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 of the Code, 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 of the Code 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, apart from the fact that the application under Order I Rule 10 of the Code and for amendment of the plaint had been filed when the trial was nearing conclusion, it is also noteworthy that the application is based on false averments of the petitioners. They alleged that they had come to know about the transfer deed from the statement of Sukhwinder Singh (defendant No.2) whereas the defendants had specifically

was in the knowledge of the petitioners before the trial commenced. The case is of the year 2011. Joining of new party at the fag end would reopen the trial. Thus, seen from every angle, the prayer of the petitioners was devoid of merit and the application was rightly dismissed by learned trial court.

Thus, there being no illegality or perversity warranting interference in the order of learned trial Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

05.04.2017.
jitender sharma

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

Whether Reportable : **Yes/ No**