 Pooja Sharma
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2850 of 2016

DATE OF DECISION:12.05.2017

Parminder Singh and another .....Petitioners

Versus

Ram Singh and others .....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. HPS Ghuman, Advocate
for the petitioners.

Mr. Nipun Gupta, Advocate
for respondents No.2 and 3.

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DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 14.3.2016 (Annexure P-1) passed by Civil Judge (Junior Division), Nabha, District Patiala, vide which, the application moved by respondent-defendants No.1 to 3 under Order 6 Rule 17 CPC for amendment of written statement has been allowed.

Briefly, the facts of the case are that the petitioner-plaintiffs filed a suit for declaration to the effect that they are joint owners to the extent of 1/10th share out of the suit land measuring 110 kanals, 4 marlas as well as declaring the judgment and decree dated 7.2.1986 as illegal, null and void. Suit was contested by the respondent-defendants. Written statement

was filed by controverting the pleas taken in the plaint. During pendency of the suit, an application was filed under Order 6 Rule 17 CPC for amendment of the written statement by taking the plea that the suit land is ancestral and coparcenary property. Notice in the application was issued and reply was filed by the petitioner-plaintiffs. Said application was allowed vide order dated 14.3.2016, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners contends that the application filed by the respondent-defendants No.1 to 3 has been wrongly allowed as nowhere it was mentioned in the application that despite due diligence, the amendment sought to be made in the written statement could not be made earlier during pendency of the trial. The respondent-defendants No.1 to 3 have not made any reference during recording of the evidence that the suit property is ancestral or coparcenary in nature and it has been mentioned in the application only filed for amendment of the written statement. The respondent-defendants No.1 to 3 have stated in the application that such plea could not be taken by them due to over sight and ignorance on the part of the counsel. Learned counsel further contends that the observations made by the trial Court are contradictory and beyond pleadings as at one place it has been observed that the property is ancestral and coparcenary without realising the fact that there was no such pleading of the defendants. Learned counsel also submits that it has also wrongly been observed that the facts which were to be incorporated had already been brought to the notice of the counsel for the defendants but the same were not pleaded due to bona fide error. It is also the submission of learned counsel for the petitioner that the suit was filed in the year 2010 and the parties had already lead their respective evidence and the application for

amendment of written statement was filed at the belated stage when the case was fixed for arguments. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others** 2007 (1) RCR (Civil) 481, **Vidyabai and others Vs. Padmalatha and another** 2009 (1) RCR (Civil) 763 as well as of this Court in the cases of **Sunil and others Vs. Jai Parkash and another** 2013 (1) PLR 465, **Ram Niwas Vs. Daya Nand and others** 2015 (5) RCR (Civil) 692 and **Rajiv Kumar and another Vs. Vijay Kumar and others** 2015 (5) Law Herald 4580, in support of his contentions.

Learned counsel for respondents No.2 and 3 vehemently opposed the submissions made by learned counsel for the petitioner and submits that the order passed is well reasoned and no interference is required.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The facts relating to filing of suit, thereafter filing of written statement and subsequently filing of an application for amendment of the written statement and allowing the same are not disputed.

As per proviso to Order 6 Rule 17 CPC, the amendment of pleadings can be allowed only when the Court comes to the conclusion that inspite of due diligence, the party could not raise the matter before the commencement of the trial. The present suit is for declaration and the rights of the parties are to be determined on adducing evidence from both the sides. As per case of respondent-defendants No.1 to 3 the facts which have

been sought to be incorporated by way of amendment were brought to the notice of the previous counsel but the facts were not mentioned in the written statement on account of bona fide error. There is no dispute that amendment of the pleadings can be allowed at any stage of the trial, in case the applicant is successful to establish that despite due diligence, he could not bring those facts on record or the same are necessary for just decision of the case.

Order 6 Rule 17 CPC is reproduced as under:-

> 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."

Order 6 Rule 17 CPC commences with the words "the Court may at any stage of the proceedings" and thereafter goes on to confer a power to allow either party to alter or amend his pleadings, where it appears to the court that the amendment is necessary for the purpose of determining the real questions in controversy. The proviso, by use of the expression "Provided that no application for amendment shall be allowed after the trial has commenced" appears to place an embargo on the power of a Court to allow amendment of the pleadings after the trial has commenced. The

proviso, however, qualified the prohibitory expression by the use of the words “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” thereby clarifying that the embargo is not absolute and the Court, may if circumstances so permit, allow an amendment after the commencement of the trial.

While considering the true import of Order 6 Rule 17 of the Code, Hon'ble the Apex Court in **Ajendraprasadji N. Pande's case (supra)** has held as under :-

> “32. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on Section 148 for extension of time for any purpose.
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> 33. Ultimately to strike a balance the Legislature applied its mind and re-introduced Rule 17 by Act 22 of 2002 w.e.f. 1.7.2002. It had a provision permitting amendment in the first part which said that the Court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration.
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> 34. Reliance was placed on the judgement of this Court in

Salem Bar Association case (supra). In this case, this Court dealt with Order 6 Rule 17 at para 26. Chief Justice Y.K. Sabharwal speaking for the Bench observed as under :-

"Order 6 Rule 17 of the Code deals with amendment of pleadings. By amendment Act, 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier.

The object is to prevent frivolous applications which are filed to delay the trial. There is noillegality in the provision."

39. It is to be noted that the provisions of Order VI Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.

40. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless inspite of due diligence,the matter could not be raised before the commencement of trial. It is submitted,that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended

Order VI Rule 17 was due to the recommendation of the Law Commission since Order 17 as it existed prior to the amendment was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the Amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of Courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their Court case and manifests the absence of due diligence on the part of the appellants disentitling them to relief."

Hon'ble the Apex Court in the case of **Revajeetu Builders and Developers Vs. Narayanasawamy and sons and others** 2009 (6) Law Herald (SC) 3663 has laid down certain parameters, which are under:-

1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
2) Whether the application for amendment is bonafide or malafide?
3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of

money.

4) Refusing amendment would in fact lead to injustice or lead to multiple litigation.

5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

In the present case, the amendment sought in the written statement has been allowed on the ground that the plea that the property in dispute is ancestral and coparcenary in the hands of Kandhara Singh could not be taken in the written statement by the earlier counsel representing the defendants. While passing the impugned order, it has been undertaken by the respondent-defendants that they will not lead any evidence after the amendment.

The judgments relied upon by learned counsel for the petitioners are not applicable to the facts and circumstances of the case.

In view of the facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is hereby dismissed.

May 12, 2017 **(DAYA CHAUDHARY)**
pooja **JUDGE**

Whether speaking/reasoned Yes
Whether reportable Yes