

Civil Revision No.2796 of 2017

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

Sr. No.120

**Civil Revision No.2796 of 2017
DECIDED ON: April 21, 2017**

JAGAT SINGH AND OTHERS

..PETITIONERS

VERSUS

HARI CHAND AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Aditya Jain, Advocate,
for the petitioners.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners/plaintiffs have sought the setting aside of impugned order dated February 03, 2017 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Faridabad, whereby an application moved by the petitioners/plaintiffs under Order VI Rule 17 of the Code of Civil Procedure (for short 'Code' only) for the amendment of the plaint has been dismissed.

2. Briefly stated the facts giving rise to the instant petition are that

the petitioners/plaintiffs had filed a suit for declaration and permanent injunction as consequential relief thereof to the effect that they are owners in possession of the agricultural land measuring 28K-03M situated within the revenue estate of Village Dingarpur, Tehsil and District Faridabad on the basis of the registered sale deed dated November 06, 1987 fully detailed and described in para No.3-a of the instant revision petition.

3. Since, the father of the petitioners/plaintiffs namely Chet Ram was already lessee for 99 years in the aforesaid land and after purchasing the suit land by the petitioners/plaintiffs from him, he had relinquished in their favour. Since then, they are owners in peaceful possession of the disputed land. However, the petitioners/plaintiffs further claimed that the names of the respondents/defendants have been wrongly incorporated in the revenue record. In fact they remained in the possession of the suit land and the entries showing their cultivating possession of the suit land in the revenue record are wrong, ineffective, inoperative, null and void and are not binding upon the possessory rights of the petitioners/plaintiffs. In the said suit, the respondents/defendants did not appear despite service and as such, they were proceeded against ex parte vide order dated April 21, 2000. Ultimately, vide judgment dated November 17, 2000, the suit was ex parte decreed.

4. Thereafter, in the year 2005, the respondents/defendants moved an application for setting aside the ex parte judgment and decree dated November 17, 2000 as well as ex parte order dated April 21, 2000 under Order IX Rule 13 CPC on the ground that neither they ever appointed any counsel on their behalf nor signed any power of attorney or written

statement. That application filed by the respondents/defendants was allowed vide order dated November 04, 2009 whereby the ex parte order dated April 21, 2000 as well as ex parte judgment and decree dated November 17, 2000 were set aside.

5. Aggrieved against the said order dated November 04, 2009, petitioners/plaintiffs filed the revision petition bearing CR No.1202 of 2010 before this Court seeking setting aside whereof but that was dismissed vide order dated September 15, 2016.

6. After passing the aforesaid order, the petitioners/plaintiffs have filed an application under Order VI Rule 17 CPC for amendment of plaint to challenge the judgment and decree dated November 26, 2011 alleged to have been obtained by the defendants/respondents No.1 to 4 by concealment of facts as well as the judgment and decree dated November 17, 2000 referred to above as well as order dated May 26, 1998 passed by Civil Judge (Jr. Divn.) Faridabad as well as consequential amendments but that applications were dismissed vide order dated February 03, 2017 which necessitated the filing of the instant revision petition.

7. Assailing the impugned order dated February 03, 2017, it has been contended by learned counsel for the petitioners/plaintiffs that the impugned order is the result of misappropriation and settled proposition of law of amendments in the pleadings. The impugned order suffers from material illegality or irregularities, thus, is liable to be set aside. The learned counsel for the petitioners/plaintiffs further contends that the learned trial court has gravely erred in law while holding that ex parte judgment and decree dated November 26, 2011 has been passed in the

absence of the plaintiffs and is not binding upon them as the lis was still sub-judiced between the parties in the present suit. As the petitioners/plaintiffs have filed the revision petition before this court. The respondents/defendants have filed the Civil Suit No. 168 against the present petitioners/plaintiffs without disclosing the fact regarding the pendency of the present civil suit between the parties so the ex parte judgment and decree dated November 26, 2011 is the subsequent fact which has come to the notice of the petitioners/plaintiffs prior to the filing of the application for amendment of the plaint. Even the learned trial court has not considered that respondents/defendants Nos.1 to 4 had concealed the judgment and decree dated November 17, 2000 as well as ex parte order dated May 26, 1998 whereby the correction of Khasra Girdawari has been ordered and has illegally and wrongly dismissed the application for amendment. Otherwise also, the proposed amendment does not in any way cause prejudice to the opposite side rather, if, the proposed amendment is not allowed, the petitioners/plaintiffs would suffer an irreparable loss and injury which cannot be compensated in terms of the money.

8. While concluding his argument, it has been submitted by learned counsel for the petitioners/plaintiffs that since the proposed amendment is not going to change the nature or character of the suit and further the respondents/defendants are not going to be prejudiced in any manner, the amendment should have been allowed by the learned trial court which has been wrongly declined while ignoring the basic principles governing the amendments of the pleadings.

9. It has further been submitted by learned counsel for the

petitioners/plaintiffs that object of Order VI Rule 17 COC, the court should retry the case on merits that comes before it. It should liberally allow all bona fide amendments necessary for determining the real question in between the parties. The first part of Rule 17 of the Code gives ample discretion to the court but the second part is imperative and enjoins the court to allow all necessary amendments. Otherwise also, the rule of amendment is essentially a rule of justice, equity and good conscience and power of the amendment should be exercised and larger interest of justice.

10. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioners/plaintiffs and appraisal of the documents available on record and scrutinizing the impugned order dated November 03, 2017, this court is of the considered view that various submissions made by learned counsel for the petitioners/plaintiffs do not carry any legal weight and are devoid of any merits.

11. No doubt, all the rules and procedures are handmaid of justice and the language employed by the draftsman of procedural law may be liberal and stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice.

12. Indisputably, an application under Order VI Rule 17 CPC deals with the pleadings. By Amendment Act, 46 of 1999 though, this provision was treated, yet, it was restored by the Amendment Act 22 of 2002 but with an added proviso to the effect that no application for amendment shall be allowed after the commencement of the trial unless the court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial.

13. A glance at the proviso appended to Order VI Rule 17 CPC makes it crystal clear that to some extent it has curtailed the absolute discretion of the court to allow amendment at any stage in the present scenario, if, an application is filed after the commencement of the trial, it is obligatory upon that party concerned to prove that in spite of due diligence, the said amendment could not be sought earlier.

14. Adverting to the facts and circumstances in the instant case, it is not in dispute that an application for amendment of the plaint was moved by the petitioners/plaintiffs after framing of issues i.e. commencement of the trial. Moreover, if the proposed amendment is allowed, it would entirely change the nature and character of the main suit and would be prejudicial to the right and interest of the defendants/respondents. Otherwise also, the petitioners/plaintiffs cannot challenge the ex parte decree dated November 26, 2011 through the present suit as the legal remedy available to the petitioners/plaintiffs under law is twin fold i.e. (i) to move an application under Order IX Rule 13 CPC for setting aside the ex parte judgment and decree; secondly, to prefer an appeal against the same before the Appellate Court. The petitioners/plaintiffs have no locus standi to file a separate suit challenging the ex parte judgment and decree. Similarly, the amendments of the ex parte decrees as well as ex parte order passed by the Assistant Collector, 2nd Grade were very much prior to the filing of the application for amendment and there is nothing on record to suggest that in spite of due diligence, they could not incorporate the aforesaid facts at the appropriate stage.

15. Thus, taking the case of the petitioners/plaintiffs from any of

the angles, this court does not find any infirmity, illegality or perversity in the impugned order, so as to cause any interference in the impugned order, which is otherwise absolutely in consonance with the settled proposition of law.

16. As an upshot of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, the same is dismissed.

17. No order as to costs.

April 21, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No