

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CIVIL REVISION No. 2999 of 2017
DECIDED ON: MAY 18, 2017

KHEM CHAND

.....PETITIONER

VERSUS

AVDESH KUMAR PANDAY AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Tanmoy Gupta, Advocate
for the petitioner.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought the setting aside of order dated February 06, 2017 passed by learned Civil Judge (Jr. Division), Mewat, whereby, an application moved by the petitioner under Order VI Rule 17 of the Code of Civil Procedure (for short 'Code') for the amendment of plaint; has been dismissed.

Brief facts of the case are that petitioner/plaintiff has filed a suit for permanent injunction with consequential relief to the effect that General Power of Attorney dated October 06, 1995 and the sale deed dated June 20, 2002 by the defendant No.1 in favour of defendants No.2 and 3 in respect of the suit land are void and illegal and forged and also that the petitioner is co-owner/co-sharer in possession of 1/6th share in the suit land

with consequential relief for restraining the defendants No.2 and 3 from

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HIGH COURT CHANDIGARH

alienating the suit land in any manner whatsoever.

The learned counsel for the petitioner contends that during the course of proceedings of the suit, petitioner moved an application under Order VI Rule 17 of the Code for the amendment of plaint just to incorporate or alternative remedy to the effect that if the trial Court comes to the conclusion that defendants No.2 and 3 are in possession of the suit or during the trial of case they succeeded in dispossessing the petitioner-plaintiff from the suit land and then a decree for possession may also kindly be passed in favour of petitioner-plaintiff. However, the said application was dismissed by learned trial Court vide impugned order dated February 06, 2017, which is liable to be set aside being against the principles governing the grant of permission to allow the proceedings as well as settled canons of law. In fact, the trial Court has failed to construed that the petitioner only intended to incorporate the alternative prayer, which will not change the nature of the suit and no prejudice would be caused to the rights of respondents in any manner.

Similarly, learned trial Court failed to taken into consideration the fact that the said alternative plea could not be taken earlier just due to inadvertence and mistake on the part of the counsel of the present petitioner. It is only an apprehension of the petitioner that respondents/defendants would interfere in his possession and may be successful in ousting him. It was only due to the said reason a necessity arose to seek the amendment of the plaint for just incorporating alternative relief.

This Court has given an anxious thought to the afore-said

submissions made by learned counsel for the petitioner but find the same to

be without any legal and factual substance.

Undoubtedly, the suit is lingering on for its disposal since the year 2009. Both the parties have already concluded their evidence in support of their respective pleadings and now the case is fixed for final arguments. No doubt the court is empowered to grant the permission for the amendment of pleadings on the basis of an application moved under Order VI Rule 17 of the Code by either of the parties at any stage of the proceedings but the proviso appended to Order VI Rule 17 of the Code vide amendment Act 22 of 2002, a rider has been created and the amendment can only be allowed if the conditions mentioned in the proviso are established. Proviso appended to Order VI Rule 17 of the Code clearly provides 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 commencement of trial. By now it is pretty settled that the trial commences on the date of framing of issues arisen out of the pleadings of the parties. Now the suit is fixed for final arguments before learned trial Court and both the parties have already concluded their evidence, it cannot be said that the alternative relief, which has been sought through an application for amendment was not earlier in the knowledge of petitioner/plaintiff or that in spite of due diligence, it could not be raised at appropriate time. The pre requisite embodied in the proviso are not falsified in the instant case.

Thus, it can be safely concluded that learned trial Court has rightly dismissed the application. Since, in the consideration of this Court

the provisions as well as principles governing the grant of declining the amendment of plaint. This Court does not find any reason to meddle with it. Rather, the same is upheld.

As a sequence of afore-said discussion, this Court does not find any merit in the instant revision. As such, it stand dismissed.

No order as to costs.

**JASPAL SINGH
JUDGE**

**MAY 18, 2017
sham**

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

Whether reportable ***Yes/No***