

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.117

Civil Revision No. 3234 of 2017
DECIDED ON: May 08, 2017

INDERJIT SINGH & ANOTHER

..PETITIONERS

VERSUS

HARCHAND SINGH & ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. S.K.Chawla, Advocate,
for the petitioners.

JASPAL SINGH, J.

By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated January 17, 2017 (Annexure P-6) passed by the learned Civil Judge (Jr. Divn.), Faridkot vide which an application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure (for short 'Code'); has been dismissed.

2. Though an application moved by the petitioners under Order VI

Rule 17 of the Code, petitioners/plaintiffs sought the following amendments;

“To add sub para (v) and (vi) in para No. 6 of the plaint of the suit:

Sub para (v) 'That late Sh. Sandhura Singh was at the most a karta of the Joint Hindu Family Constituted by the plaintiffs, Sandhura Singh and Harchand Singh. Thus, Sandhura Singh enjoyed a status of just Manager and his having failed to prove himself to be good one, there being no legal necessity to execute the transfer deed, the said Sandhura Singh could not do so. That being so, the alleged transfer deed may be ordered to be set aside holding the same to be ineffective and inoperative qua the rights of the plaintiffs who have been deprived off their rights in the suit property quite unjustly, unfairly, improperly and undeservingly.

Sub para (vi) “That once the alleged transfer deed dated 04.09.2006 is ordered to be set aside, as a consequence thereof, the sale deed No. 2850 dated 26.11.2012 and the mutation No. 1786 dated 29.11.2012 would stand set aside automatically. Yet, it is prayed that the said documents may also very kindly be ordered to be set aside holding them to be null and void.”

To claim alternative relief by adding para 7A in the plaint of the suit;

Para 7A) “That though not admitted, yet if at all in any such circumstances, the alleged deed(s) are held to be valid in general and the sale deed dated 26.11.2012 in particular, in that event, the plaintiffs claim a preferential right in the suit land. The plaintiffs and the defendants are the real brothers. They enjoy the right of succession of properties interse. Keeping in view the provisions of the Section 22 of the Hindu Succession Act, the plaintiffs make an offer to the defendant

No.2 to receive the alleged sale consideration paid by him to Harchand Singh. First of all, she should prove the passing of the consideration. It is a talk of the town/village that he has not paid even a single penny to Harchand Singh, the brothers of the plaintiffs and the alleged sale deed is without consideration. The perusal of Section 22 supra would show that the plaintiffs have got a right of preference over the suit property and thus while invoking and with the aid of the provisions of Section 22 of Hindu Succession Act, the plaintiffs pray that the sale deed in favour of the defendant No.2 may be ordered to be set aside and the said defendant may be ordered to execute and get registered a sale deed of the land in question i.e. land measuring 5 kanals 11 marlas which is 1/4th share of the land measuring 22 kanals 6 marlas bearing khasra No. 3021/15-2, 3022/7-4 situated within the revenue estate of Village Dhilwan Kalan, Tehsil Kotkapura, District Faridkot.”

3. While assailing the impugned order, it has been contended by learned counsel for the petitioners that the suit land is the Hindu Family Coparcenary/Ancestral property and late Sandhura Singh being the head of the family was holding the same as karta/Manager. He had no legal necessity to part with the suit land depriving the petitioners/plaintiffs of their moieties in the suit land. Moreover, it is but natural that when a new counsel is engaged by a litigious party, the newly engaged counsel does not apply its mind and in this case earlier counsel and newly engaged counsel reassessed the factual and legal aspects of this case and thereafter, moved an application for the amendment of plaint, which has been illegally and arbitrarily declined by learned trial Court. Moreover, the amendment sought in the plaint is necessary for the proper adjudication of the matter in controversy and to grant the proper relief.

4. This Court has given an anxious thought to the submissions made by learned counsel for the petitioners but find the same to be without any legal or factual substance.

5. No doubt amongst all the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. The dominant purpose of the amendment is to minimize the litigation but at the same time it is the duty of the Court to see whether the amendment sought is absolutely in consonance with Order VI Rule 17 of the Code. Before considering the factual details which are basis for seeking the amendment of their plaint, it is useful to refer Order VI Rule 17 of the Code, which reads as under:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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;

Provide 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.”

6. A glance at the afore-said provision makes it crystal clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Court have to be liberal in accepting the same, if the same is made prior to the commencement of the

trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. Here it would be pertinent to mention that original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with no added proviso to prevent application for amendment being 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 proviso refer to above, to some extent curtails absolute discretion to allow amendment at any stage.

8. Adverting to the facts of the case in hand the amendment sought by the petitioners in the plaint was very well within their knowledge at the time of filing of suit but they did not opt to incorporate the facts sought to be inserted in the plaint by way of amendment at that time.

9. Thus, it can be said that despite due diligence they could not incorporate the facts which have been sought to be inserted or incorporated by way of amendment of the plaint. Otherwise also, a close scrutiny of the application moved by the petitioners for amendment of the plaint reveals that it would change the entire nature of the suit but relief claimed also does not permissible under law. It would also not out of place to mention that from the pleading of the parties issues were carved out by learned trial Court vide order dated November 11, 2014 but an application was moved in the Month of October 2016. Moreover, this Court is of the considered view

that application for amendment is nothing but an outcome of the change of counsel by the petitioners before learned trial Court.

10. In the light of what has been discussed above, this court does not find any merit in the instant petition and same is dismissed, whereby the impugned order is upheld.

11. No order as to costs.

MAY 08, 2017

SHAM

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*