

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

CR-4224-2015 (O&M)

Date of decision: 30.10.2017

SUKHVIR SINGH & ORS

...Petitioners

Versus

GURMAIL SINGH & ORS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate
for the petitioners.

Mr. Gulzar Mohd., Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 06.05.2015 (Annexure P1) whereby application filed by the petitioners/defendants for amendment in the written statement has been declined.

Counsel for the petitioners has submitted that Gurmail Singh (respondent No.1) has filed a suit for declaration (Annexure P2) in which the petitioners have been arrayed as defendants No.1 to 3. The petitioners filed written statement (Annexure P3) staking their claim on the basis of exchange deed dated 17.12.2010 specifically referred to in Para 5 of the written statement. It is further submitted that copy of the said exchange

deed was placed on record at the time of filing of the written statement. According to counsel, due to typographical mistake, khasra numbers of land which was obtained by the petitioners in exchange vide exchange deed dated 17.12.2010 were not correctly mentioned in the written statement raising necessity to amend the written statement in order to bring correct factual position on record on the basis of exchange deed dated 17.12.2010. It is argued with vehemence that as agreement regarding exchange of land is a part of records of the trial Court since filing of the written statement by the petitioners, no prejudice shall be caused to respondent No.1 in case the proposed amendment is allowed.

Another submission made by counsel is that amendment of written statement stands on a better footing than that of a plaint and amendment can be allowed at any stage of the proceedings even after proviso appended to Order 6 Rule 17 CPC has been added by way of amendment in the year 2002. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27.**

Counsel representing respondent No.1 has supported the impugned order with the submission that the application filed by the petitioners is clearly hit by the proviso appended to Rule 17 as the petitioners filed the application after the respondent/plaintiff has already closed his evidence.

I have heard counsel for the parties, perused the paper book particularly various annexures appended with the petition including the order impugned.

There cannot be dispute about the settled position in law that amendment of written statement stands on a better footing than that of a plaint. Equally true is that amendment can be allowed at any stage of the proceedings unless it results in causing such a serious prejudice to the other side for which costs is not the remedy. A plaintiff cannot be allowed to amend the plaint to introduce time barred claims or changing nature of suit fundamentally and constitutionally.

In the case at hand, application for amendment has been filed by the petitioners/defendants. Counsel for respondent No.1 is not in a position to dispute that the proposed amendment was made in order to bring the factual position in consonance with the agreement regarding exchange of land which duly finds reference in the written statement and a copy thereof was produced on record at the time of filing of the written statement. As the proposed amendment will not cause prejudice to the other side for which he cannot be compensated with costs, the order impugned cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed. The application for amendment of the written statement is allowed subject to payment of costs of Rs.10,000/-. The petitioners shall prepare a demand draft of Rs.10,000/- in the name of respondent No.1 and hand over demand

draft to the plaintiff at the time of filing amended written statement before the Court below.

30.10.2017
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No