

Civil Revision No.4261 of 2017

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

Civil Revision No.4261 of 2017

Date of decision: 04.07.2017

Gyarsi Lal @ Gyarsa and others

.....Petitioners

versus

Amar Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. P.R. Yadav, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Challenge in the instant revision petition under Article 227 of the Constitution of India has been laid to the order dated 22.05.2017 (Annexure P-6) passed by the trial Court in civil suit No.572/2012-16 instituted in the year 2012, dismissing the application of the petitioners/defendants No.1 to 3 to incorporate their counter-claim in the written statement.

Brief facts of the case are that respondents/plaintiff filed a suit for declaration and injunction against the petitioners claiming themselves to be owners of the suit land measuring 29 kanals 11 marlas situated in the revenue estate of Village Atali, Tehsil Narnaul, District Mahendergarh, in lieu of exchange effected between their predecessor-in-interest, namely, Nanad (since deceased) and predecessor-in-interest of the petitioners/defendant, namely, Ramkunwar (since deceased). The suit was contested. Denying the claim of the respondents/plaintiffs, the petitioners in their written statement took the stand that Nanad was not owner in

possession of the land allegedly exchanged by him, therefore, no question of

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any exchange arose at any point of time. During the pendency of the suit, petitioners claiming their possession over the suit land had moved an application under Section 145 Cr.P.C. before the Executive Magistrate, Narnaul, to attach and take possession of the suit land. The said application was dismissed by the concerned Executive Magistrate on 17.10.2013 on the ground that since litigation between the parties was pending in civil Court and both the parties have already been directed to maintain status quo regarding possession, therefore, he had no jurisdiction to entertain the application. Being aggrieved, petitioners/defendants approached Additional Sessions Judge, Narnaul by way of criminal revision challenging the order of DRO, which too was dismissed vide judgment dated 11.03.2015.

At the stage of rebuttal evidence, the respondents/plaintiff moved an application for production of both the aforesaid order dated 17.10.2013 passed by the Executive Magistrate and order dated 11.03.2015 passed by Additional Sessions Judge, Narnaul in their rebuttal evidence. The said application after due contest was allowed by learned Civil Judge (Junior Division), Narnaul, vide order dated 24.03.2017 observing that the said documents were material for just and proper decision of the case. Only thereafter, the petitioners awoke out of a great slumber to counter and circumvent the order dated 17.10.2013 passed by Executive Magistrate and order dated 11.03.2015 passed by Additional Sessions Judge, Narnaul and moved an application to incorporate the relief of possession over the suit land by way of their counter-claim in the written statement. The said application has been dismissed by the trial Court vide impugned order dated 22.05.2017 on the ground that since the defendants have already took a

stand in their written statement that they are in possession of the suit land, therefore, they cannot be permitted to claim the relief of possession, more

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particularly when the issues regarding alleged exchange have already been framed and both the parties have concluded their evidence.

Learned counsel for the petitioners contended that petitioners simply want to incorporate equitable relief of possession as their counter-claim in the written statement as new cause of action has arisen in favour of the petitioners after passing of the aforesaid orders, which requires no fresh evidence to be led by them. Amendment sought by way of counter-claim in the written statement is not going to delay the trial. In support of his contentions, learned counsel for the petitioners relied upon the judgments of Hon'ble Supreme Court in ***Jitendra Kumar Khan and others v. Peerless General Finance and Investment Company Limited and others***, 2013(4) R.C.R. (Civil) 725, ***Vijay Prakash Jarath v. Tej Prakash Jarath***, 2016(2) R.C.R. (Civil) 392 and the judgment of this Court in ***Jai Singh Dahiya v. State of Haryana and others***, 2016(3) R.C.R. (Civil) 914.

After giving my thoughtful consideration to the submissions made by learned counsel for the petitioners, I do not find any merit in the present revision petition for the reasons to follow.

When the respondents/plaintiff were permitted by the trial Court to produce order dated 17.10.2013 passed by Executive Magistrate and order dated 11.03.2015 passed by Additional Sessions Judge, Narnaul, the petitioners, after awakening from a great slumber, to circumvent and counter the said orders, which came into existence on account of their own act and conduct, moved an application to introduce counter-claim of possession in the written statement, filed way back in the year 2012.

It is pertinent to mention here that throughout the petitioners **are claiming** their possession over the suit land while denying the exchange in between their predecessor-in-interest and predecessor-in-interest of the

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plaintiffs.

Before the Executive Magistrate also in their application under Section 145 Cr.P.C., the petitioners, claiming their possession, sought to attach the suit land alleging that the respondents/plaintiff were not in possession of it. The said application was dismissed by the Executive Magistrate and his order was upheld by Additional Sessions Judge, Narnaul. Since, from the very beginning, the petitioners are claiming their possession over the suit land and now at this belated stage being an afterthought, they cannot be permitted to incorporate their counter-claim of possession in the written statement.

The facts and circumstances of the authorities relied upon by learned counsel for the petitioners are not identical to the facts of the present case. Judgment in the case of ***Jitendra Kumar Khan*** (supra) relates to Order 8 Rule 6 CPC qua suit for recovery of money in which defendant is always permitted to claim set-off. In the said case, the amendment in the written statement, claiming set-off, was allowed on the basis that the claim put forth could be treated as a plea in the nature of equitable set-off being the same connected to the nature and circumstances as they can be looked upon as a part of one transaction. ***Vijay Prakash's*** case (supra) also relates to order 8 Rule 6 CPC, in which counter-claim was held maintainable as the cause of action on the basis of which the same was filed had accrued before the written statement was filed.

In the instant case, as discussed above, both the parties had concluded their evidence. Claim of possession sought to be introduced by way of counter-claim in the written statement, had not accrued to the

petitioners prior to filing of the written statement rather is based on the two orders passed against them subsequently during the pendency of the suit.

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Therefore, the reliance of the petitioners on these judgments is mis-conceived. In the case of **Jai Singh Dahiya** (*supra*) petitioner had filed a suit for declaration and injunction claiming service benefits i.e. full pay (less the subsistence allowance paid to him during suspension period), promotion, timely increment and other service/retiral benefits, which was decreed. In appeal he moved an application for amendment of the plaint to introduce the relief regarding interest. This Court permitted the petitioner to add the relief with respect to interest on the delayed payments on the ground that the said amendment did not change the nature of the suit and no fresh evidence was required to be led. It was also held that mere addition of the relief will not make the petitioner entitled for interest as it was still the discretion of the first appellate Court to consider the plea on merits. Whereas there are no such circumstances in the instant case as the petitioners, by way of incorporation of counter-claim, want to change the nature of the litigation. Therefore, reliance of the petitioners on this judgment is also mis-conceived. Even otherwise, amendment sought by the petitioners regarding possession by way of counter-claim is contrary to their own stand that they were in possession of the suit land.

In view of discussion made above, I do not find any illegality or perversity in the impugned order.

Resultantly, the revision petition is dismissed.

(Ramendra Jain)
Judge

July 04, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.