

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5978 of 2016 (O&M)

Date of Order:05.12.2017

Mrs. Kanchan Dua and others

..Petitioners

Versus

Sarwan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. C.B.Goel, Advocate, and
Mr. Brijender Kaushik, Advocate,
for the petitioners.

Mr. R.S.Pandher, Advocate,
for respondent no.1.

Mr. Roopak Bansal, Advocate,
for respondent no.4.

ANIL KSHETARPAL, J (Oral)

Plaintiffs-petitioners are in revision petition against order dated 09.08.2016, dismissing the application for amendment of the plaint, so as to incorporate challenge to the judgment and decree dated 03.06.1994.

It is not disputed before me that the aforesaid judgment and decree was disclosed in the written statement filed on 17.08.2012. The complete particulars of the judgment and decree were mentioned in the written statement. Plaintiffs filed replication denying that there was no such suit.

Plaintiffs remained silent almost for a period of 3 years and filed application for amendment of the plaint on 05.08.2015. Plaintiffs have already concluded their evidence. Defendants have also started their evidence. Considering all these aspects, learned trial Court dismissed the application.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed in the paper book.

The facts as noticed above are not being disputed. Learned counsel for the petitioners-plaintiffs has vehemently argued that plaintiffs-petitioners have filed an application calling upon the defendants to produce copy of the judgment and decree dated 03.06.1994. He submits that since the aforesaid judgment and decree was not produced, therefore, the application for amendment could not be filed.

In the considered opinion of this Court, the application for amendment cannot be allowed at this stage for two reasons:- (i) as per proviso to Order 6 Rule 17 of the Code of Civil Procedure, after the commencement of trial, normally the amendment cannot be allowed unless the party is able to satisfy the Court that inspite of due diligence such fact was not in the knowledge of the party. In the present case as noticed earlier the judgment and decree dated 03.06.1994 was disclosed by the defendants on 17.08.2012. Plaintiffs even filed replication denying the filing of any suit or any judgment and decree. Therefore, the plaintiffs cannot plead that such fact was not in their knowledge; (ii) still further the trial is at the advance stage. Plaintiffs have already concluded their evidence. Defendants are leading their evidence. As per proviso, normally no amendment in the pleadings is to be allowed after the trial has commenced.

In view of the aforesaid discussion, there is no scope for interference in the impugned order passed by the Court below.

The revision petition is dismissed.

December 05, 2017

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No

: Yes/No