

124.

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

CIVIL REVISION-2135-2018

Date of decision:02.04.2018.

ABHEY RAM AND ORS.

... Petitioners

Versus

DAULAT RAM AND ORS.

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Naresh Kaushik, Advocate, for
Mr. Kulwant Singh Dhanora, Advocate, for the petitioners.

HARI PAL VERMA, J.(Oral)

Petitioner-plaintiffs have filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 10.01.2018 (Annexure P-3) passed by learned Civil Judge (Junior Division), Hisar whereby the application filed by them (petitioner-plaintiffs) seeking amendment in the plaint and to add Chander Singh son of Phool Singh, Rattan Singh son of Manohar Lal and Ajit Singh son of Bani Singh as defendants, was dismissed.

Briefly stated, plaintiffs have filed a suit for possession by way of partition of the suit land, as detailed in the plaint, claiming to be co-owners of the suit land. While the suit was pending for evidence of the plaintiffs, an application for amendment of the plaint and for impleading the aforesaid persons as co-defendants was moved. However, the said application was dismissed vide order dated 10.01.2018. Hence, the present petition impugning the order dated 10.01.2018 has been filed.

Learned counsel for the petitioners has argued that the petitioner-plaintiffs have filed a suit for partition regarding the suit land and

Singh son of Phool Singh, Rattan Singh son of Manohar Lal and Ajit Singh son of Bani Singh have taken over unauthorized possession forcibly and in illegal manner and in the event of a decree having been passed in favour of plaintiffs, they (plaintiffs) are required to seek dispossession of the newly added persons and, therefore, they are necessary parties for the just decision of the suit.

I have heard learned counsel for the petitioners.

In the application, the plaintiffs have alleged that the persons sought to be impleaded as defendants are in illegal and forcible possession of the suit land, but in order to succeed in the plaint, plaintiffs are required to establish the right of partition first and it is as a consequence thereof, they can seek possession. Even otherwise on the date when the suit for partition and possession was filed by the plaintiffs, they were conscious about the possession of the persons sought to be impleaded. Therefore, in view of proviso to Order 6 Rule 17 CPC as amended in 2002, no amendment can be allowed after the commencement of trial unless Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the case in hand, plaintiffs were already well-conversant about the fact that Chander Singh son of Phool Singh, Rattan Singh son of Manohar Lal and Ajit Singh son of Bani Singh are in possession of suit land, but still they have not impleaded them in the suit.

Dismissed.

(HARI PAL VERMA)
JUDGE

02.04.2018

sanjeev

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No