

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

CR No.5462 of 2016 (O&M)

Kulwinder Kaur & Anr.

....Petitioners

Versus

Jang Singh and Ors.

....Respondents

Date of Order: 08.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Swaich, Advocate for the petitioners.

Mr. Sunil Kumar, Advocate for respondent No.1.

Mr. Sant Kashyap, Advocate for respondent No.2.

AMIT RAWAL, J (ORAL)

The petitioner-plaintiffs are aggrieved of impugned order dated 29.7.2016 passed by learned Civil Judge (Jr Division), Kharar whereby an application moved under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

Learned counsel for the petitioners-plaintiffs submitted that the petitioners filed the suit for declaration, claiming to be a member of the joint Hindu Family property being co-sharers in respect of the suit property. However, during the pendency of the suit, brother-Gurdeep Singh instituted a suit against his father, Jang Singh and got a collusive decree passed against Jang Singh, which necessitated the plaintiffs to move an application for amendment. He submitted that the aforesaid amendment is necessary and essential for proper adjudication of the suit as he would not be leading any fresh evidence except tendering the copy of said judgment and decree but the court below has erroneously dismissed the application vide the impugned order, which deserves to be set aside.

Learned counsel for the respondents submitted that as per the provisions of Order 6 Rule 17 CPC, as has been amended by legislation in 2002, an amendment at the stage of rebuttal evidence, cannot be permitted to be incorporated. In fact, the suit is not maintainable and that the application was filed at a belated stage. He, thus, fully supported the impugned order and prayed for dismissal of the petition.

After hearing learned counsel for the parties and appraising the paper book, I am of the view that the aforesaid factual subsequent aspects of the matter were beyond the control of the petitioners. The fact of passing judgment and decree in the aforesaid suit came to the notice of the petitioners later on. Had the situation like the one arisen earlier, the evidence would have been led by them in that regard. Moreover, since the petitioners have undertaken not to lead any other evidence, in my view, the amendment now sought to be incorporated will not alter and change the nature of the suit since the said decree is related to the suit property. The court below should have looked into this aspect.

Resultantly, the petition is allowed. The impugned order is set aside and the amendment application is allowed with a rider that the petitioners will not lead any fresh evidence except tendering copy of the said judgment and decree indicated above subject to payment of Rs.5000/- as costs to be paid to the respondents-defendants. Let amended plaint be filed within a period of 15 days from the date of receipt of certified copy of this order.

March 08, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No