

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

C.R.No.6021 of 2016

Hazari Lal and Ors.

....Petitioners

Versus

Lala Ram and Ors.

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Yadav, Advocate for the petitioners.

Mr. M.S. Randhawa, Advocate for respondent Nos.1 to 3.

AMIT RAWAL, J (ORAL)

The petitioners are aggrieved of the impugned order dated 07.9.2016 passed by learned Addl. Civil Judge (Jr. Division), Mohindergarh whereby their application filed under Order 6 Rule 17 CPC and Order 1 Rule 10 for impleadment read with Section 151 CPC seeking amendment of the plaint has been dismissed.

Learned counsel for the petitioners submitted that the plaintiff instituted the suit claiming declaration and permanent injunction to the effect that the plaintiff and proforma respondents are owners in possession of the land measuring 1 kanal 10 marlas situated in village Palri Panihara, Tehsil and District Mohindergarh upto 1-6th share equally for contesting defendants had no concern to that effect qua the land in dispute and the entry in the revenue record showing the ownership of the defendants to the extent of half share was incorrect, illegal and against the revenue record.

Defendants in their written statement pleaded that neither the plaintiffs nor the proforma defendants have any right to claim anything from the contesting defendants for all the co-sharers were not impleaded as a party in the present suit, thus the suit was liable to be dismissed.

During the pendency of the suit, an application under Order 6 Rule 17 CPC and Order 1 Rule 10 read with Section 151 CPC seeking amendment of the plaint & impleadment was moved, which was replied by the defendants-respondents.

The trial Court on the basis of material available on record dismissed the application, hence the present petition.

Learned counsel for the plaintiffs-petitioners submitted that the impugned order is not sustainable in the eyes of law as the same suffers from illegality and perversity. The amendment sought is bonafide and typographical error, which have not been objected by the respondents specifically in their written statement. He submitted that the suit was filed on the basis of the revenue record but as soon as the matter was consulted with the Lawyer, the error/inadvertence was realized leading into filing of the application. Said application has been erroneously rejected by the trial Court in the light of proviso to Rule 17 of Order 6 CPC which provides that no application for amendment shall be allowed after the commencement of trial. He submitted that the plaintiff will not lead any fresh evidence and if the application is not allowed the petitioner shall suffer an irreparable loss as the respondents are wrongly recorded as owners to the extent of half share whereas they are owner of 1/6 share.

On the other hand learned counsel for respondents no 1 to 3 have fully supported the impugned order stating that the belated application

filed for amendment of the plaint in view of the amended provisions of order 6 Rule 17 CPC was not maintainable as the factum of non impleading the proper party had been brought to the notice long time back.

I have heard learned counsel for the parties and perused the paper book.

No doubt the amended provisions of the order 6 Rule 17 do envisage that amendment sought should be made with diligence. Even an objection qua non impleading of all the co-sharers as a party has been taken in para 13 in the written statement.

In my opinion, the court below should not have been hyper technical in rejecting the application, especially when a statement had been made at bar that the plaintiff would not lead any fresh evidence. It should have allowed the amendment subject to any terms and conditions.

For the reasons stated above, present application is allowed. Impugned order dated 7.9.2016 is set aside subject to payment of Rs.10,000/- as costs to be paid to the counsel representing the respondent in this Court. The petitioners are directed to file amended plaint within a period of one month from the date of receipt of this order. The written statement to the amended plaint shall be filed within 15 days thereafter and the trial court shall proceed with the trial from the stage it was pending.

Revision petition is allowed.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

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

