

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

Civil Revision no.6271 of 2018

Date of Decision:18.09.2018

Balwinderjit Singh and another

.....Petitioners

Vs.

Dalip Singh

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Hitesh Verma, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (Oral)

By this petition the petitioners challenge the order of the learned Additional Civil Judge (Sr.Divn.), Barnala, dated 21.08.2018, by which the application filed by the petitioner under Order VI Rule 17 of the CPC has been dismissed on the ground that the amendment in the written statement, as was sought by the petitioners/defendants, firstly was on the basis of the statement of one Sher Singh which was recorded in a different suit much after the filing of the written statement in the present *lis* on 08.12.2014, in which Sher Singh was a co-defendant alongwith the respondent herein (plaintiff) in the present *lis* and therefore any admission on the part of Sher Singh regarding the possession of the defendants (present petitioners) over the suit property would be of no consequence.

It has also been held by the trial Court vide the impugned order, that vide the amendment sought, the petitioners\defendants want to take a complete somersault on the stand taken by them earlier in their original written statement.

Upon query by this Court with regard to the aforesaid, learned counsel could not deny the factual position, that in the original written statement (a copy, in vernacular, produced in Court today), the petitioners had taken a stand that they were not in possession of the suit property whereas now, vide the amended written statement, they wish to state that they have become owners-in-possession thereof on the basis of adverse possession.

Learned counsel for the petitioners however relies upon a judgment of the Supreme Court in “**Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others**” (Civil Appeal No.2019 of 2007 decided on 18.04.2007), wherein it was held that amendment to the pleadings (written statement in that case also), even taking an inconsistent plea, could be allowed.

Even so, the difference between that case and the present *lis*, is that the trial of the suit had not yet commenced as has been specifically noticed by the Supreme Court (in that case).

In the present case the application for amendment of the written statement has been filed by the petitioners admittedly after the evidence of the respondent/plaintiff had been closed.

Order VI Rule 17 of the Code of Civil Procedure 1908, reads as follows:

“17. Amendment of pleadings— *The Court may at any stage of the proceedings allow either party to alter or amend his*

pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, very clearly, amendment of pleadings after the trial has started, i.e. after issues have been framed and evidence has also commenced, is statutorily barred unless it could be shown by the person seeking the amendment that in spite of due diligence he/she could not have raised the matter before the commencement of the trial.

Even if this petition were to be allowed on the touchstone of the ratio of the aforesaid judgment of the Supreme Court, on the issue of contradictory pleading not being barred, however, amendment of the written statement in the aforesaid circumstances cannot be allowed in my opinion, in view of the stage at which the application under Order VI Rule 17 has been filed, as the petitioners cannot now take a stand that they did not know, despite due diligence, that they themselves were actually in possession of the suit property (contrary to what had been stated in the original written statement that they were not in such possession).

As regards learned counsels' contention that even in the application seeking amendment it had been stated by the petitioners that the entire stand was disclosed by them to their counsel, and it was the fault of the counsel that a contrary stand had been taken, that argument also cannot be accepted because obviously the petitioners signed the written statement as was filed in the trial Court and therefore, the plea taken that the counsel filed a written statement contrary to instructions, cannot be accepted, which unfortunately has become a common excuse used by anyone who seeks a

particular kind of relief.

Consequently, finding no merit in this petition, it is dismissed
in limine.

(AMOL RATTAN SINGH)
JUDGE

September 18, 2018.
dharamvir

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO