

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

CR-7417-2018

Date of Decision: 15.11.2018

Manju Bala and another

.... Petitioners

Versus

Sarabjit Singh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present:- Mr.Suveer Sheokand, Advocate
for the petitioners.

AVNEESH JHINGAN, J. (Oral)

The civil revision petition has been filed under Article 227 of the Constitution of India assailing the order dated 13.07.2018 (Annexure P-2) passed by Civil Judge (Jr. Divn.), Ludhiana (for brevity, 'trial Court), dismissing the second application moved by the petitioner/plaintiff under Order VI Rule 17 of Civil Procedure Code (for brevity, 'CPC').

The petitioners/plaintiffs filed a suit for perpetual injunction restraining the defendants from encroaching upon any part of passage comprising in Khasra Nos.119//3/1/1, 3/3, 4, 25/2. The suit was filed in the year 2012.

On notice, defendant No.5 filed written statement on 13.12.2012. Subsequent to the filing of written statement, petitioner/plaintiff amended the suit on 17.12.2015. Thereafter, the case was fixed for evidence and even the defendant cross-examined the witnesses and also led their evidence. In the year 2018, another application under Order VI Rule 17 of CPC was filed for amending the plaint. In the application, it was

stated that certain facts regarding the sale deed dated 27.04.1984 came to the knowledge of petitioners/plaintiffs after the written statement was filed by defendant No.5 and for that reason, the amendment was necessitated.

Learned Civil Judge (Jr. Divn.), Ludhiana dismissed the application holding that the application was filed at belated stage i.e. almost after five years, the petitioners/plaintiffs were not able to show that they were not able to raise the issue of amendment before commencement of trial, inspite of due diligence.

Aggrieved of the dismissal of the application, the present revision petition has been filed.

Learned counsel for the petitioners argued that the amendment of plaint would not change the nature of suit and it is only explanatory.

The contention raised by learned counsel for the petitioners lacks merit.

The amendment is permitted only for purpose that the real issue must come before the Court. The application for amendment cannot be allowed to be used as a tool to delay the matter.

Order VI Rule 17 of CPC is reproduced below:-

“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.”

From the perusal of the proviso to the Rule 17, it is evident that the Court should come to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of the trial. In the present case, the amendment has been sought on the basis of fact mentioned in the written statement, the written statement was filed by respondent No.5 on 13.12.2012. It would be pertinent to note that after filing of the written statement, the suit was amended and the present amendment was not carried out at that time.

No case is made out for interference in the impugned order.

The revision petition is hereby dismissed.

15.11.2018
anju

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes

Whether Reportable : Yes