

CR No. 7442 of 2018

DECIDED ON: OCTOBER 31, 2018

SIRI PAL AND OTHERS

.....PETITIONERS

VERSUS

AJIT AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rahul Srivastawa, Advcoate for
Mr. Rupinder Thakur, Advocate
for the petitioners.

AVNEESH JHINGAN, J (ORAL)

The present civil revision petition has been filed against the order dated 13.10.2018 (Annexure P-4) passed by learned Civil Judge (Jr. Division), Sonapat (hereinafter referred to as 'the trial Court') dismissing the application filed under Order VI Rule 17 of the Code of Civil Procedure Code (for short 'the Code') seeking amendment of the plaint.

2. The petitioners/plaintiffs had instituted a suit for permanent injunction for restraining the respondents/defendants from dispossessing them from the suit property and from destroying their crop. Further not to change the nature of the suit property by carving out plots and digging earth and for restraining the defendants from alienating the specific killa number without getting it partitioned from the concerned authority.

3. The suit was instituted in October, 2012 and it was pleaded that the plaintiffs and the defendants were the co-sharer in the suit property. In reply filed by the defendants/respondents, it had come on record that the petitioner/plaintiffs and the respondents/defendants were the co-sharer of the suit property. In evidence also, it was admitted that the defendants/respondents were co-sharer in the suit property. An affidavit of Siri Pal, Plaintiff No.1 was filed to the effect that the respondents/defendants were co-sharer in the suit property, even, in his cross-examination, he admitted the said fact. PW-2 and PW-3 had also deposed on oath that the petitioners/plaintiffs and respondents/defendants were co-sharer.

4. At this stage after almost six years of filing of the suit, an application was moved for amendment stating that inadvertently and due to clerical mistake, it was mentioned in the suit that the petitioners/plaintiffs and respondents/defendants were co-sharer of the suit property.

5. The learned trial Court has rightly dismissed the application. Not only in the pleadings but in the evidence also it had come on record that petitioners/plaintiffs and respondents/defendants were the co-sharer. By seeking an amendment at belated stage, the entire endeavour was to have afresh trial and that too, on different set of facts. For amendment of pleadings generally a liberal view is taken but it could not be allowed to be used as a tool to cause prejudice and injustice to the opposite party.

6. Learned counsel for the petitioners relies upon the decision of the Supreme Court rendered in the case of **Rajesh Kumar Aggarwal and others vs.**

K.K. Modi and others: 2006 (3) JT 607. The reliance on the said judgment does not enhance the case of the petitioners. The Supreme Court in the afore-said

judgment held that amendment should be allowed for determining the real controversy between the parties provided it does not cause injustice or prejudice to the other side.

- 6. In the case in hand, if amendment is allowed it would result in causing injustice but will also be prejudicial.
- 7. No case is made out for interference.
- 8. The petition is dismissed.

OCTOBER 31, 2018
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(AVNEESH JHINGAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>