

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Revision No.8200 of 2016 (O&M)  
Date of Decision: December 05, 2018

Kuldip Singh (since deceased) through L.Rs & others

...Petitioners

Versus

Amarjit Singh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. J.S.Brar, Advocate,  
for the petitioners.

None for the respondents.

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**AMIT RAWAL, J.**

The present revision is directed against the impugned order dated 26.10.2016 (Annexure P-1), whereby application of the petitioner-plaintiffs for amendment of the plaint in a suit for declaration that plaintiff No.1 or plaintiff Nos.2 to 4 be declared co-owners to the extent of 1/8<sup>th</sup> share filed at Moga, has been dismissed.

Mr. J.S.Brar, learned counsel appearing on behalf of the petitioner-plaintiffs submitted that in the aforementioned suit, ownership, mutation bearing No.4446 and orders dated 24.07.1992, 21.07.1993, 28.05.1998, 09.10.1998 of Assistant Collector IInd Grade, Moga, Collector Moga, Commissioner Ferozepur Division, Ferozepur and Financial Commissioner, Punjab respectively were challenged. An application for determining the territorial jurisdiction of the court was filed as earlier

Village Sibian was part of Tehsil Moga, but since 1997, it was part of Tehsil

and District Faridkot. The trial court, vide order dated 17.07.2010, allowed the same and returned the plaint to be presented before the appropriate court. Plaintiffs challenged the order by filed Misc.Civil Appeal No.19 of 2010, which was dismissed vide order dated 09.09.2013.

In pursuance to the order of the trial court, petitioners presented the plaint before the Additional Civil Judge (Senior Division), Faridkot and vide order dated 24.07.2010, the trial court while entertaining the application under Order 39 Rule 1 & 2 CPC regarding the sale of the suit property, granted ex-parte injunction.

Defendant Nos.1, 3, 10 to 12 and 13 filed written statement, whereas defence of defendants No.11, 14 and 17 in the absence of written statement within 90 days, was struck off. Service of defendant Nos.2 and 16 was ordered to be effected at own responsibility by issuing dasti summons and thereafter they were served through publication by causing publication in the newspaper. Petitioners moved an application Annexure P-4 dated 02.01.2012 for amendment of the plaint on the premise that at the time of his death, Gurdit Singh was owner of land measuring 11 kanals 12 marlas situated in the revenue estate of Village Kale-ke Tehsil Moga and, therefore, aforementioned prayer was sought to be added in the plaint on the premise that defendants were not co-owners and entries in the revenue record were wrong. The said application has been declined. The impugned order is not sustainable as the circumstances explained do not remotely reflect any delay on the part of the plaintiffs but only on account of territorial jurisdiction. Petitioners did not conceal fact of dismissal of the earlier application by the court at Moga. Amendment would not change the nature of the case. Mistake was not intentional but for the reasons explained

in the application.

Contesting respondents have been served, but there is no representation on their behalf. Accordingly, I proceed to decide the application on merits.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that the finding arrived at by the trial court regarding the concealment of dismissal of the earlier application by the court at Moga is not correct as the same was disclosed in Para 11 of the application (Annexure P-4). The mistake was not intentional nor the amendment sought will change the nature of the suit. Assuming for argument sake, at a subsequent stage the jurisdiction of the Court at Faridkot with regard to the amendment is ousted, it will not take away the right of the plaintiffs to avail remedy in accordance with law as the party cannot remain remedy-less.

For the reasons stated above, there is illegality and perversity in the impugned order. The same is hereby set-aside. Revision petition stands allowed.

**December 05, 2018**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**