

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

CR-229-2018

Date of decision: 13.11.2019

Gurbhej Singh and others

.....Petitioners.

vs.

Dalip Kaur and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Mr. V.K. Sandhir, Advocate for the petitioners.

Mr. Kewal Krishan, Advocate
for Mr. Premjit Kalia, Advocate for respondents.

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Sanjay Kumar, J. (ORAL)

This revision petition, under Article 227 of the Constitution, arises out of the order dated 28.10.2017 passed by the learned Civil Judge (Junior Division), Ajnala (hereinafter, 'the trial Court'), in CNR No. PBASA0-000318-2014 in CIS No. CS/271/2014. By the said order, the trial Court allowed the application filed by defendants in the suit under Order 6 Rule 17 CPC seeking amendment of their written statement. Aggrieved thereby, the plaintiffs in the suit are in revision.

By order dated 16.01.2018, this Court stayed the operation of the order under revision.

Heard Mr. V.K. Sandhir, learned counsel for the petitioners/ plaintiffs, and Mr. Kewal Krishan, learned counsel representing Mr. Premjit Kalia, learned counsel for respondents No. 1, 3, 4 and 5/defendants No. 1, 3, 4 and 5. Respondent No. 2/defendant No. 2 was set ex-parte by order dated 30.5.2018 passed in this revision.

Parties shall hereinafter be referred to as arrayed in the suit.

The plaintiffs filed the subject suit under Section 45 of the Punjab Land Revenue Act, 1887, for a declaration that the entries in the names of defendants No. 1 to 4 in the column pertaining to ownership in the Jamabandi for the year 2010-2011 were illegal, null and void and to enter their names in the said column. This suit prayer was made in relation to certain extents of land situated in Kariyal Village, Ajnala Tehsil, Amritsar District. They sought a further declaration to the effect that the mutation sanctioned in favour of defendants No. 1 to 4 on the basis of the decree dated 23.1.2007 passed by the learned Additional Civil Judge (Senior Division), Ajnala, was illegal, null, void and liable to be set aside. An additional declaration was also sought by them to the effect that Mutation No. 2637 sanctioned in favour of defendants No. 1 to 4 on the basis of the decree dated 23.1.2007, relied upon by the defendants, was illegal, null and void, having been obtained by fraud and misrepresentation. A consequential permanent injunction was sought to restrain the defendants from alienating the suit land without following the due process of law.

It is an admitted fact that the plaintiffs' evidence had concluded and the defendants had also examined two of their own witnesses by the time the subject application under Order 6 Rule 17 CPC came to be filed. The situation was therefore governed by the Proviso to Order 6 Rule 17 CPC, which was inserted in the Statute Book in the year 2002. However, perusal of the application filed by the defendants reflects that they did not even make an attempt to comply with the requirements of the said Proviso. In terms of the said Proviso, no application for amendment can be allowed by the Court after commencement of the trial unless the Court comes to the conclusion that, in spite of due diligence, the party seeking such amendment could not

have done so before commencement of the trial. Significantly, the defendants did not even cite any reasons as to why they could not seek amendment of their written statement before commencement of the trial. Be it noted that the judgment they wished to introduce in the record by way of this amendment dated back to the year 2007 and they filed their written statement in the present suit in 2013. Without the requirements of the aforestated Proviso being satisfied, the trial Court could not have considered the amendment application at all. [See *Ajendraprasadji N. Pande and another vs. Swami Keshavprakeshdasji N. and others*, 2007 AIR (SC) 806, and *Vidyabai and others vs. Padmalatha and another*, 2009 AIR (SC) 1433]. However, perusal of the order under revision reflects that the trial Court completely lost sight of the requirements, as set out in the aforestated Proviso. The Trial Court baldly allowed the application stating thus:

‘The parties may amend their pleadings in such a manner as it will not going to change the nature of the suit and amendment sought is necessary for just decision of the case. Applicants/defendants want amendment in the written statement, which is not going to change the nature of the suit and the amendment sought is necessary for just decision of the case. Further, if the proposed amendment is allowed, then the plaintiff will not be prejudiced as the present amendment is necessary to decide the case on merits. Therefore, the application under Order 6 Rule 17 filed by defendants/applicants is allowed and disposed off, accordingly.’

The order under revision therefore reflects complete non-application of mind not only by the defendants in the suit but also by the trial Court. Allowing of the amendment application in these circumstances, long

after commencement of the trial, therefore cannot be countenanced. The Civil Revision is accordingly allowed setting aside the order dated 28.10.2017 passed by the learned Civil Judge (Junior Division), Ajnala.

No order as to costs.

(SANJAY KUMAR)
JUDGE

13.11.2019

preeti

whether speaking/non speaking

yes/no

whether reportable/non reportable

yes/no