

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

CR no.6499 of 2016

Date of Decision: 29.04.2019

Sarwan Kumar and another

...Petitioners

Vs.

Kashmiri Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Pritam Saini, Advocate, for the petitioners.
Mr. Amit Shukla, Advocate for
Mr. Deepak Manchanda, Advocate, for the respondents.

Amol Rattan Singh, J (Oral)

By this petition, the petitioners challenge the order passed by the learned trial court (Additional Civil Judge, Sr. Divn., Shahbad), dated 09.09.2016, by which the petitioners application under Order 6 Rule 17 of the CPC, has been dismissed.

The petitioners are defendants in the suit filed by respondents no.1 to 5 herein and the amendment sought is essentially in respect of the fact that prior to bifurcation of the larger holding of which the suit land was a part, such larger holding consisting of 100 *kanals* and 14 *marlas* of land contained in *Khewat* no.26 of the revenue estate concerned, as per the *Jamabandi* (record of right) for the year 1962-63.

It is seen that the said amendment is sought to be made by addition to paragraph 3 of the original written statement, which reads as follows:-

“3. That para no.3 of the plaint is wrong and hence denied. The suit property is already been partitioned and the parties are in possession in their respective portion. Detailed reply has already given in the preceding paras.”

On the other hand, vide the amendment sought, a very detailed addition is sought to be made to the said paragraph, running into almost 4 pages, by which the entire history of the suit land, including previous litigation before the revenue court in partition proceedings is described.

Vide the impugned order, the learned trial court has held that though an amendment to the written statement can be allowed at any stage, however, no reason has been given as to why the application was not filed at the initial stage itself and therefore with the trial having commenced, with issues having been framed on 05.03.2013, the application (as was filed on 10.11.2014), could not be allowed.

Mr. Saini, learned counsel for the petitioners, submits that what is now sought to be added in the written statement in paragraph 3 thereof, could not have been added earlier because the original written statement was filed on 12.03.2013, whereas an order was passed subsequently by the Assistant Collector 2nd Grade, Babain, in partition proceedings *qua* the suit land on 04.08.2014, to the effect that the partition could not take place essentially because the area sought to be partitioned actually did not match with the area available for such partition on the ground and that there was civil litigation pending *qua* ownership/title to the suit land.

Learned counsel for the respondents on the other hand submits that the petitioners not even having disclosed that an application/petition

seeking partition of the suit land was pending before the revenue authorities, they cannot take the plea of the order in such proceedings having been passed on 04.08.2014.

Consequently, he submits that the amendment sought at a subsequent stage despite knowledge that partition proceedings were pending even at the time when the original statement was filed, cannot be allowed and therefore the impugned order is not required to be interfered with.

In rebuttal, Mr. Saini, learned counsel for the petitioners, submits that as a matter of fact that the partition proceedings were in respect of 22 *kanals* and 12 *marlas* contained in *Khewat* no.55, whereas the subject matter of the suit is *Khewat* no.56, as is obvious from a perusal of a copy of the plaint as has been annexed as Annexure P-1 with the present petition. He has also produced a copy of the order passed by the learned Assistant Collector 2nd Grade, Babain, on 04.08.2014 (in Hindi), a perusal of which shows that the title of the application/petition before that court (revenue court) is to the effect that it is for partition of 22 *kanals* and 12 *marlas* of land contained in *Khewat* no.55, though in the order itself *Khewat* nos.53 and 54 have also been referred to.

Thus, having considered the matter, the subject matter of the suit land undoubtedly being *Khewat* no.56 as shown from the plaint, with the amendment sought being on the ground (as contented before this Court on behalf of the petitioner) that the respondents had no title to the suit land, as even their vendors did not have title thereto, it being a part of a larger

khewat consisting of 100 *kanals* and 14 *marlas*, no part of which could have been owned by the vendors of the respondents, I would consider it appropriate to allow the amendment, without making any comment whatsoever on the correctness of either what is contained in the application seeking such amendment, or in the body of the amended paragraph itself, the correctness of which would naturally be adjudicated upon by the trial court on the basis of the evidence led before it.

To make it clear, the contention is that the suit land contained in *Khewat* no.56 was a part of a larger *khewat*, partition proceedings of a part of which are subject matter of the order dated 04.08.2014. Therefore, it being contended that the amendment has become necessary to show lack of title in the respondents, with the order dated 04.08.2014 having been passed after the original written statement was filed, the amendment is being allowed by this Court with the impugned order set aside.

Again, to repeat, no observation made in this order shall be treated to be one on the merits of any of the contentions raised by the petitioner, either before this Court or before the trial court.

Thus, as per what has been contended before this court, not seen at this stage to be incorrect, to the effect that the petitioners had no knowledge of the involvement of the land in question in partition proceedings of a larger *khewat*, at the time when their original written statement was filed, the bar contained in the proviso to Rule 17 of Order 6 of the CPC would not stand in their way.

If eventually the trial court, upon appraising evidence, comes to the conclusion that knowledge of what is now being inserted by the amendment was available with the petitioners at the time when the original written statement was filed, regardless of the outcome of the suit, the petitioners would be burdened with costs at that stage by that court.

29.04.2019

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(Amol Rattan Singh)**Judge****Whether speaking/reasoned : Yes****Whether reportable : Yes**