

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

CR-4100-2019 (O&M)
Date of decision: 08.07.2019

Charanjit Singh and another

...Petitioners

Versus

Gram Panchayat, Village Jahangir and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. S.S. Gill, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

This revision petition is directed against order dated 23.05.2018, passed by Addl. Civil Judge (Sr. Divn.), Payal, District Ludhiana, vide which an application under Order 6 Rule 17 read with Section 151 CPC filed by the plaintiffs for amendment of the plaint had been dismissed.

Briefly stated facts of the case are that plaintiff Mohan Singh and others had brought a suit for permanent injunction against Gram Panchayat, Village Jahangir, Tehsil Payal, District Ludhiana and its Sarpanch seeking grant of permanent injunction, restraining the defendants from damaging or cause to damage and changing the existing condition of the agricultural land to *Gair Mumkin* plots and from shifting or cause to shift the *Hadda Rori* from its existing position to the agricultural land mentioned earlier.

On notice, the defendants appeared. During the course of

proceedings, the plaintiffs had filed an application to amend the plaint for the reason that when the present suit was filed on 25.08.2014, at that time, there was no construction over the suit property and on 07.11.2016, the defendants started raising construction therein, which is required to be removed and an amendment in the plaint is to be made in that regard. However, the application was resisted by the defendants, contending that the purpose of filing the application was to delay the proceedings and the proposed amendment would change the nature of the suit and that the defendants had constructed *Hadda Rori* for the benefit of general public on the basis of resolution passed on 06.06.2011. The trial Court had dismissed the application with the following observations:-

“4. After hearing the contentions raised by the learned counsel both the parties and going through the case file, I am of the view that as per the averments made by the plaintiffs, the plaintiffs came to know about the raising of the construction over the suit property on 07.11.2016 but the plaintiffs have filed the present application for amendment on 17.01.2018. No explanation has been given by the plaintiffs as to why they kept mum for the said period in filing the present application. The person who keep on sleeping over his rights is not entitled for any relief. Moreover, the trial of the present case has begin and the witnesses of the plaintiff had already been cross examined and no amendment can be allowed after the commencement of the trial. It appears that the plaintiffs instead of completing their evidence wants to delay the proceedings of the present suit by one way or another. As such no ground is made out to allow the present application and same is hereby dismissed.

However, these observations of mine shall have no effect on the merits of this case.

Now case is adjourned to 11.07.2018 for plaintiff evidence at own responsibility subject to last opportunity.”

This order left the plaintiffs aggrieved and they have filed the present revision petition.

Learned counsel for the revisionists/plaintiffs has contended that the proposed amendment was necessary for just decision of the case and to determine the real questions in controversy between the parties, therefore, it should have been allowed but was wrongly disallowed by the trial Court and by way of acceptance of the revision petition, the wrong done by the trial Court be undone and the amendment in the plaint be allowed. In support of his contentions, he has referred to judgments i.e. **Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others**, 2006 (2) RCR (Civil) 577, **Brij Lal Singh Vs. Punjab State Electricity Board, Patiala and others**, 1992(2) CurLJ (CCR) 269, **Rajinder Singh Vs. Narinder Kumar Verma**, 1992(2) RCR (Civil) 516 and **Kailash and Anr. Vs. Yasina & Ors.** 2009(4) PLR 702.

However, I find that there is no merit in the revision petition. The Order 6 Rule 17 CPC though provides that the Court may at any stage of proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and that of such amendment shall be made as may be necessary for the purpose of determine the real questions in controversy between the parties. As per proviso, no application for amendment shall be allowed after the trial has commenced and 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. In the present case, the trial Court has given a specific finding that as per averments made by the plaintiffs, they came to know about raising of construction over the suit property on 07.11.2016, however, the application for amendment was filed on 17.01.2018 and no explanation had been given by the plaintiffs as to why they kept mum for the said period and that trial had begun inasmuch as witnesses of plaintiffs have been cross examined. Therefore, no amendment could be allowed after commencement of the trial. The order passed by the trial Court is well reasoned, does not suffer from any illegality or infirmity. The order is certainly not perverse or passed in an arbitrary manner, therefore, no interference by this Court while exercising revisional jurisdiction is called for. Finding no merit in the revision petition, the same stands dismissed.

08.07.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No