

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6523 of 2019

Date of Decision:17.10.2019

MOHD MAAZ AND ANOTHER

...Petitioners

Versus

SAEED AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Arjun Atri, Advocate
for the petitioners.

DEEPAK SIBAL, J. (ORAL)

A correct copy of the plaint (Annexure P-1) is filed by the petitioners in Court today and the same is taken on record.

The present petition is directed against the order dated 17.09.2019 passed by the Addl. Civil Judge (Senior Division), Mewat (for short-the Trial Court) dismissing an application filed by the petitioners under Order 6 Rule 17 CPC through which they had sought amendment in their plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition, are that the petitioners filed a suit seeking therein a declaration that the revenue record pertaining to the land detailed and described in para No.1 of the plaint (for short-the suit property) was wrong and not binding on the petitioners. The respondents, who are the defendants in the suit, were also sought to be restrained from changing the

nature of the suit property by raising any construction thereupon.

On being put to notice, the contesting respondents/defendants put in appearance before the Trial Court and denied the petitioners' claims. On the dispute between the parties, the Trial Court framed issues on which both the parties have admittedly led their entire evidence. When the matter was listed for final arguments, the petitioners filed an application seeking therein to amend their plaint to introduce new facts in para 1 of the plaint as also to amend their prayer. Such application was dismissed through the order under challenge in the present petition.

Learned counsel for the petitioners has been heard.

In the year 2015, the petitioners had filed a suit seeking therein a declaration that the present revenue record pertaining to the suit property was wrong and illegal and thus not binding on the petitioners. The contesting respondents/defendants were further sought to be restrained from raising any construction on the suit property. Mandatory injunction to remove the alleged illegal construction by the respondents/defendants was also sought.

After four years of the filing of their suit, when the matter was posted for final arguments, the petitioners filed an application seeking therein to introduce the fact that they and the performas defendants, as per Jamabandi for the years 1954-55, 1962-63, 1967-68, 1972-73 and 2002-03, are in possession of the half share of the suit property as joint tenants and the contesting respondents/defendants are in possession of the other half share. The prayer clause of their suit is also sought to be amended to the extent that now the petitioners seek to be declared in possession of half

share of the suit property as joint tenants with the other half share, being in the possession of respondents/defendants No.1 to 7 in the same capacity.

Through the sought amendment, the petitioners are seeking to set up an entirely a new case which is based on facts which admittedly pertain to periods prior to the filing of the suit. The revenue record on the basis of which the amendment has been sought, are the Jamabandis for the period 1954-55, 1962-63, 1967-68, 1972-73 and 2002-03 which were well within the petitioners' knowledge at the time of filing of their suit as these jamabandis had been referred to by them in the plaint filed by them in the year 2015. No reason is forthcoming as to why the facts now sought to be introduced through the amendment were not taken at the time of filing of their suit. That being so, the sought amendment is hit by the proviso to Order 6 Rule 17 CPC. The petitioners could and should have taken these pleas at the time of filing of their suit and not at the stage when the same is ripe for final arguments.

Dismissed.

(DEEPAK SIBAL)
JUDGE

October 17, 2019

Jyoti-IV

Whether speaking/reasoned Yes/No Whether Reportable Yes/No