

(106) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8391 of 2018
Date of decision: 09.01.2019

Inderjit Kaur and others

..... Petitioners

Versus

Balbir Singh and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present : Mr. Deepak Arora, Advocate for the petitioners.

B.S. WALIA, J. (ORAL)

[1] Challenge in the revision petition is to order dated 20.11.2018 (Annexure P-5) passed by the learned Civil Judge (Jr. Div.), Gurdaspur dismissing the application preferred by the petitioner under Order 6 Rule 17 CPC.

[2] Learned counsel contends that the impugned order is legally unsustainable as it is settled law that all amendments which are necessary for the just adjudication of the case are to be allowed and the learned trial Court has failed to take, aforementioned aspect of the matter, into account while rejecting the application.

[3] Brief facts of the case leading to the filing of the revision petition are that civil suit was filed by the petitioners/plaintiffs claiming that they were owners in possession of 1/4th share of land measuring 38 kanals, 0 marla comprised in khewat No.58/50, khatoni No.70, rect. No.14, killa

No.6/1 (4-0), 8/1 (2-0), 15 (8-0), rect. No.15, killa No.8 (8-0), 9 (8-0), 10 (8-0) situated in the revenue estate of village Bode, HB No.708, Tehsil and District Gurdaspur with a consequential relief of Permanent Injunction for alienating the specific khasra numbers out of the suit land.

[4] Written statement was filed by the respondents/defendants on 07.12.2015 taking up the plea of their right to the suit land on the basis of Will dated 03.08.2015 executed by Late Sh. Chanan Singh, owner of the suit land. Issues were framed on 05.08.2016, whereafter the petitioners/plaintiffs examined three witnesses. It was thereafter that an application (Annexure P-3) was moved under Order 6 Rule 17 read with Section 151 CPC for amendment of plaint so as to raise a challenge to Will dated 03.08.2015 as referred to by the respondent/defendant in their written statement dated 07.12.2015. The application (Annexure P-3) was dismissed on the ground that the same had been moved belatedly. In dismissing the application, reliance was placed on the decision of this Court in **Navneet Singla v. Haryana Urban Development Authority and others, 2016 (3) RCR (Civil) 1049**. In Navneet Singla's case (Supra) amendment of plaint was sought to challenge an order which was already in existence and to the knowledge of the plaintiff before filing of the suit. While holding that such fact should have been pleaded in the original plaint or at any rate, before commencement of the trial i.e. framing of issues in view of the provisions of Order 6 Rule 17 CPC, the application for amendment in Navneet Singla's case (Supra) was dismissed.

Proviso to Order 6 Rule 17 CPC lays down that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party

praying for amendment could not have raised the matter before the commencement of trial.

[5] In the instant case, written statement was filed by the respondents/defendants on 07.12.2015 taking up the plea of Will dated 03.08.2015 in their favour. Issues were framed on 05.08.2016, whereafter the petitioners/plaintiffs examined three witnesses. It was thereafter only that the application (Annexure P-3) under Order 6 Rule 17 read with Section 151 CPC was moved for amendment of plaint.

[6] On query, learned counsel for the petitioners/plaintiffs states that the application for amendment was moved in the year 2018. Once the respondents/defendants had taken up the plea of Will having been executed in their favour on 03.08.2015 in the written statement which was filed on 07.12.2015 and issues were framed thereafter on 05.08.2016, moving of an application (Annexure P-3) under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint so as to incorporate a challenge to the Will dated 03.08.2015 in the year 2018, does not disclose exercise of due diligence.

[7] No doubt amendments necessary for the adjudication of the controversy are to be allowed but the aforesaid rule is subject to the proviso to Order 6 Rule 17 CPC. The prayer in the instant case is categorically hit by the proviso to Order 6 Rule 17 CPC which provides that no application for amendment shall be allowed after the trial has commenced, 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.

Trial commenced with the framing of the issues on 05.08.2016 and leading of evidence in respect thereto. Despite the Will being to the notice of the petitioners/plaintiffs as far back as on 07.12.2015, the

application for amendment was not moved in the year 2018. Accordingly, the prayer for amendment was rightly rejected on account of absence of exercise of due diligence in moving the application for amendment.

[8] In the light of the position as noted above, I find no error with the well-reasoned order passed by the learned trial Court.

[9] The Revision Petition is, accordingly, dismissed in limine.

(B.S. Walia)
Judge

09.01.2019
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