

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1124 of 2018

Date of Decision: 04.04.2022

Manjeet Singh and Another

... Petitioner(s)

Versus

Balbir Singh (now deceased) through his legal heirs and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. Arjun Lakhanpal and Mr. Varun Parkash, Advocates
for the petitioner(s).

Mr. Paramjit Singh Jammu, Advocate
for the respondents.

Anil Kshetarpal, J.

1. While assailing the correctness of the order, passed by the trial Court on 23.01.2018, the plaintiffs have filed the present revision petition. The trial Court has rejected the prayer of the petitioners to amend the plaint.

2. The plaintiffs filed a suit for grant of decree of declaration that they are owners in possession of the property left behind by their grant father, late Sh.Gurdit Singh, on the basis of a registered Will dated 17.01.2002. They also pray that the alleged Will, set up by the defendants, dated 11.08.1992 is not binding on their rights and the same be declared illegal.

3. During the pendency of the suit, the defendants filed an application for permission to amend the written statement in order to include

the assertion with regard to the lease deed dated 31.07.1992, allegedly,

executed by late Sh. Gurdit Singh in favour of the defendants. The aforesaid application was allowed by the Court on 23.05.2017. The plaintiffs filed an application for permission to include a relief of declaration that such lease deed dated 31.07.1992 is illegal. The trial Court has dismissed the application on the ground that the trial has commenced.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

5. The learned senior counsel representing the petitioners contends that the necessity of moving an application for permission to amend the plaint has arisen only because the defendants had filed an application for permission to amend the written statement, which was allowed. He submits that the plaintiffs filed an application within a period of five months from the date of passing of the order dated 23.05.2017, whereby the application, filed by the defendants, was allowed. He submits that if necessary permission to amend the plaint is not granted, the plaintiffs are likely to suffer serious prejudice.

6. Per contra, the learned counsel representing the respondents contends that the application, filed by the plaintiffs, is not maintainable because, while opposing the prayer for permission to amend the written statement, the plaintiffs did not seek permission to amend the plaint.

7. It is evident that the defendants have been permitted to take a new defence in the suit. Such being the position, the plaintiffs are required to be given an opportunity to take necessary steps in order to protect their interest. The suit is pending before the before the trial Court.

8. Order VI Rule 17 CPC does not put any restriction on the

enabling power of the Court to allow the amendment, however, the Court is required to examine the matter, in the peculiar facts and circumstances of each case. Proviso to Order VI Rule 17 CPC permits the Court to allow the amendment, even after commencement of the trial, provided the party satisfies the requirements. In the present case, the plaintiffs have filed an application only because a new defence has been asserted by the defendants.

9. Hence, the present revision petition is allowed. The plaintiffs are permitted to file an amended plaint, within a period of one month, from today. Thereafter, the trial Court is directed to proceed with the matter.

(Anil Kshetarpal)
Judge

April 04, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No