

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

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**CR-1485-2022 (O&M)
Decided on : 29.04.2022**

Mewa Singh and others

... Petitioner(s)

Versus

Tehal Singh and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Jaideep Verma, Advocate
for the petitioner(s).

Mr. Shehbaz Thind, Advocate
for respondent(s)-caveator(s) No.1 & 2.

MANJARI NEHRU KAUL, J. (Oral)

The instant revision petition has been preferred by the petitioner under Article 227 of the Constitution of India, seeking setting aside of the order dated 18th February, 2022 (Annexure P-9), passed by the learned Civil Judge (Jr. Divn.), Ludhiana, in CS/2602/2017, vide which the application moved by the respondents/plaintiffs under Order 6 Rule 17 CPC, was allowed. Besides, a further prayer for staying the operation of impugned order dated 18.02.2022 (Annexure P-9) has also been made.

Learned counsel for the petitioners/defendants submits that the trial Court while passing the impugned order failed to appreciate that the application under Order 6 Rule 17 CPC was moved after the commencement of trial at a highly belated stage. Learned counsel submits that the said application was filed only to delay the trial, inasmuch as, the written statement in the suit was filed by the petitioners/defendants on 05.02.2017 and it was only two years thereafter, the said application under Order 6 Rule 17 CPC was moved by the respondents/plaintiffs for

amendment of their plaint. Learned counsel submits that the entire complexion of the suit stands changed as a consequence of the amendment, which is not at all permissible under law. Learned counsel submits that the impugned order is against the settled principles of law, as no claim which on the face of it is barred by limitation, can be allowed to be included by way of a subsequent amendment in the plaint. In support of his submissions, learned counsel has placed reliance upon the Apex Court rendered in ***Pankaja & Anr. Vs. Yellappa (D) by Lrs. & Ors., 2004(3) RCR (Civil) 723; Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and others, 2007(2) RCR (Civil) 679.***

Per contra, learned counsel for the caveators/respondents No.1 & 2 (hereinafter referred to as 'the caveators') submits that the caveators have instituted a suit for declaration to the effect that Jang Singh was owner in possession of the suit property, with a further relief of permanent injunction restraining the petitioners along with other defendants from alienating, mortgaging, gifting as well as transferring the suit property. Learned counsel submits that since father of the caveators i.e. Jang Singh was untraceable for a long time, it was only when the petitioners/defendants filed their written statements, they learnt about the existence of the alleged sale-deeds, which were forged and fabricated by the petitioners/defendants in connivance with their associates to grab their father's property. Hence, amendment of the plaint was necessary to include the relief of declaration *qua* the alleged sale-deeds, so as to avoid multiplicity of proceedings and for an effective adjudication of the suit in question.

Learned counsel further submits that the application under Order 6 Rule 17 CPC was filed by the caveators before the issues were framed and the trial was yet to commence, when the said application was

filed.

I have heard learned counsel for the parties and perused the relevant material on record, including the impugned order.

Admittedly, the application under Order 6 Rule 17 CPC was moved before the issues were framed by the trial Court, therefore, this Court does not find any merit in the submissions made by the learned counsel for the petitioners/defendants that the amendment had been allowed at a belated stage after the commencement of the trial. It needs to be pointed out here that the trial in a civil suit would be deemed to commence only after the issues have been framed.

A claim which is clearly barred by limitation cannot be allowed to be included by way of a subsequent amendment in the plaint. However, in the present case, it would be a matter to be appreciated during trial as to whether or not the caveators were actually aware of the execution of the alleged sale-deeds, prior to the filing of the written statements of the petitioners/defendants. Therefore, being a mix question of law and fact cannot be gone into at this stage by this Court. The Hon'ble Supreme Court in ***Pankaja's case*** (*supra*), has categorically observed that there is no absolute rule that in every case where the relief is barred by limitation, an amendment should not be allowed.

It would also be relevant to observe that the object behind allowing amendment of pleadings is to avoid multiplicity of proceedings and the Courts should allow all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties to do complete justice. However, at the same time, the Courts must not turn a blind eye if any prejudice or injustice, is likely to be caused to the opposite party by such amendment.

In the present case, learned counsel for the petitioners has not been able to satisfy this Court, as to how the amendment would cause any prejudice to the petitioners/defendants, more so, when they would get an opportunity to file amended written statements and also to lead evidence in support of their case.

In the circumstances, the instant revision petition being devoid of any merits, is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

April 29, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*