

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

**CR No.3838 of 2022 (O&M)
Date of Decision: 30.11.2022**

Vishwa Nath through his LRs

..... Petitioners

Versus

Onkar Chand and another

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Dhivya Jerath, Advocate
for the petitioners.

MANJARI NEHRU KAUL J. (Oral)

The petitioners-defendants have filed the present petition under Article 227 of the Constitution of India is for quashing of the order dated 09.08.2022 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Mukerian, vide which an application filed under Order 6 Rule 17 of CPC by the respondents-plaintiffs, was allowed.

Learned counsel appearing for the petitioners submits that the trial Court while passing the impugned order had exceeded its jurisdiction by going beyond the statutory provisions of Order 6 Rule 17 CPC. She contends that the application under Order 6 Rule 17 of CPC was moved by the respondents at a highly belated stage, i.e., after the commencement of the trial, when the respondents' evidence was underway.

Learned counsel further submits that in view of the proviso

to Order 6 Rule 17 of CPC, it was imperative upon the respondents to show that they were unable to incorporate the facts sought by way of the amendment in the plaint initially, despite exercise of due diligence. She still further submits that the respondents were in possession of the revenue records, therefore, it could not be digested that they would have been unaware about the *Khewat* and *Khasra* numbers at the time of the institution of the suit in question.

Learned counsel has vehemently argued that the amendment, which had been allowed vide the impugned order, had not only changed the entire complexion of the suit in question but had also caused prejudice to the petitioners. A prayer is thus made for setting aside of the impugned order.

I have heard learned counsel for the petitioner and perused the relevant material on record.

The Courts, no doubt, cannot be expected to turn a blind eye and rather must stay alive to any prejudice or injustice which may be caused to the opposite party on account of some amendment to the pleadings, which may have been allowed in an application moved under Order 6 Rule 17 of CPC. However, at the same time, the Courts, should adopt a liberal approach in allowing such amendment of pleadings, which may be necessary for just and effective adjudication of the matter in issue between the parties. The Administration of Justice cannot be allowed to be obstructed by a hyper technical approach while adjudicating upon the question of amendment of pleadings.

Adverting to the case in hand, the respondents by way of

an application under Order 6 Rule 17 CPC read Section 151 CPC dated 01.11.2019 (Annexure P-3) sought amendment in the plaint to the effect that “*Khewat No.1512*” be corrected and written as “*Khasra No.1512*” in the head note of the plaint and further for proper description of the suit property “*Khewat No.180/169 and Khatoni No.213*” also be inserted in the head note of the plaint.

No doubt, the said amendment was indeed sought after commencement of the trial but it cannot be said to have changed the complexion of the case or even cause any prejudice to the petitioners. On the face of it, it comes across as a mere clerical error and even otherwise, the suit property has been elaborately described in the plaint, coupled with the fact that relevant revenue records containing the description of the suit property were annexed with the plaint. Therefore, the petitioners could not in the afore-mentioned circumstances have been taken by surprise or that their defence would have been adversely effected in any manner whatsoever.

As a sequel to the above, this Court does not find any merit in the instant petitioner and the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

30.11.2022

rittu

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No