

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3281 of 2021

Date of Decision: 23.02.2022

Surat Singh and another

....Petitioners

VS

Kanwar Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. J.P. Sharma, Advocate
for the petitioners

SUDHIR MITTAL, J. (Oral)

A suit for injunction is pending. In the said suit, the defendants filed an application for amendment of written statement so as to include the relief of possession by way of counter claim. This application has been allowed by the trial court by retuning a finding that defendant-respondent No. 1 has been held to be a co-owner in an earlier decree in which father of the plaintiffs was also a party.

Learned counsel for the petitioners has submitted that proviso to Order 6 Rule 17 CPC bars an amendment after the commencement of the trial unless and until the party can show that despite exercise of due diligence the amendment application could not be filed earlier. In this case, the date on which the defendant No. 1 is claiming to have been dispossessed is prior to the date of filing of the earlier written statement and, thus, it can not be said that despite exercise of due diligence the amendment application could not have been filed earlier. Infact, the claim sought to be raised through an amendment could have been raised in the original written statement.

Admittedly, issues were framed on 03.05.2018 and the application for

amendment was filed in August 2018. Prior to the date of filing of the application

no witness had been examined and, thus, it is difficult to accept the submission of learned counsel for the petitioners. Moreover, the argument based on the proviso to Order 6 Rule 17 CPC was not raised before the trial Court and would be deemed to have been waived.

The revision petition has no merit and is dismissed.

23.02.2022
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(SUDHIR MITTAL)
JUDGE

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