

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

CR-5066-2022

Date of decision:-11.11.2022

Mahender and another

...Petitioners

Versus

Government of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.K. Bhardwaj, Advocate
for the petitioners.

H.S. MADAAN, J.(ORAL)

1. This revision petition is directed against the order dated 14.10.2022 passed by Additional Civil Judge (Sr.Divn.), Bhiwani vide which, she had dismissed application seeking amendment of written statement and for filing of counter-claim.

2. The revisionists in this case are Mahender and Hawa Singh, who along with Government of Haryana and Gram Panchayat, Mundhal Kalan are defendants in the civil suit filed by the plaintiffs Krishna Kumar and Harender against them.

3. Briefly stated, facts of the case are that plaintiffs had brought a Civil Suit bearing No.1094 dated 17.8.2016 seeking a decree of mandatory injunction directing defendants No.3 and 4 (revisionists herein) to remove the illegal construction over the land situated at village Mundhal Kalan, Tehsil and District Bhiwani and to hand over the vacant possession thereof to defendants No.1 and 2 i.e. Government of Haryana

and Gram Panchayat, Mundhal Kalan, respectively. According to the plaintiffs, the site in unauthorized possession of the revisionists/defendants falls within ABADI DEH of the village and they are threatening to raise further construction therein and to change its nature.

4. On getting notice of the suit, the defendants had put in appearance. Defendants No.3 and 4 (revisionists) had filed written statement on 17.9.2016 taking up a plea that their father had exchanged land with Gram Panchayat, however TATIMA qua the exchange was wrongly recorded. Issues on merits were framed. The case was fixed for evidence of the plaintiffs and plaintiffs proceeded to adduce evidence. After about 6 years of filing of the written statement, defendants No.3 and 4 have filed an application seeking an amendment of the written statement as well as permission to file counter-claim contending that inadvertently some explanation regarding the suit land could not be incorporated in the written statement and they want to render explanation qua TATIMA and further to raise counter claim that father of the plaintiff had been in possession over some part of khasra No.76//15 along with his land in ABADI DEH and subsequently the applicants/defendants No.3 and 4 came to know that they have possession over some area of khasra No.15 and further a compromise had taken place between Gram Panchayat and father of defendants No.3 and 4 in a suit filed by Gram Panchayat against him, therefore, such defendants wanted to file counter claim seeking a declaration that TATIMA of khasra No.76//15 is wrong and is liable to be corrected to the effect that it should be from East to West instead of North

to South.

5. That application was opposed by the plaintiffs challenging its maintainability contending that it had been filed simply to delay the proceedings; the disputed land is property of Gram Panchayat of which defendants No.3 and 4 are in illegal possession for several years; the proposed amendment would change the nature of written statement, which is not permissible under the law. Hence it be dismissed.

6. Vide the impugned order, the trial Court had dismissed the application leaving the defendants No.3 and 4 aggrieved and they have approached this Court by way of filing the present revision petition seeking setting aside of the impugned order and acceptance of the application in question filed by them.

7. I have heard learned counsel for the revisionists besides going through the record.

8. After going through the impugned order, I do not find it a fit case to interfere therewith by exercising revisional jurisdiction. The trial Court in the impugned order has observed that the application has been filed after about 6 years of filing of written statement by such defendants when evidence of the plaintiffs is almost over and if the present application is allowed that would amount to *de novo* trial, rendering the proceedings conducted over last 6 years to be futile. It has further been observed that defendants have not tendered any justifiable reason for not taking all those pleas and filing counter-claim earlier since those facts were within their knowledge right from the beginning. It has further been observed that in terms of Order VIII Rule 6-A, a counter claim can be

filed against claim of plaintiffs in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. It has been observed that since such defendants have filed their written statement way back on 17.9.2016 delivering their defence and cause of action had arisen to defendants much earlier though it has not been clearly mentioned in the application, therefore, it is doubtful whether the same comes within the period of limitation. Therefore, one of the essential requirement for filing the counter claim is missing.

9. The reasoning given by the trial Court comes to be appropriate and convincing. Even otherwise, as per proviso to Order 6 Rule 17 CPC no application for amendment shall be allowed after the trial has commenced unless Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. Here in this case the trial has already commenced and is at advanced stage. From the record and pleadings of revisionists/defendants, it comes out that they were very much aware of the facts, which now they want to incorporate in the written statement by seeking amendment and by raising counter-claim, when they had put in appearance in the trial Court and filed original written statement. Therefore, nothing prevented them from taking those pleas and raising counter-claim at that time. The proposed amendment is not found to be necessary for the purpose of determining the legal question in controversy between the parties. The defendants have already taken up a plea in that

regard in the written statement filed by them and during their evidence, they can lead evidence in that regard. The application seems to have been filed just to prolong the proceedings and to set the clock back so as to have a *de novo* trial. Such type of tactics being adopted by the revisionists cannot be allowed. The application was rightly dismissed by the trial Court.

10. The order passed by the trial Court is detailed and well reasoned. It does not come out to suffer from any illegality or infirmity much less apparent on the face of it. The order is certainly not perverse or passed in an arbitrary manner. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Thus, finding no merit in the civil revision petition, the same stands dismissed.

11.11.2022
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No