

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

CR-5135-2022

Date of decision:-14.11.2022

Krishan Chand

...Petitioner

Versus

Jaswinder Singh and others

...Respondents

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

Present: Mr.Chetan Kapoor, Advocate
for the petitioner.

H.S. MADAAN, J.(ORAL)

1. Feeling aggrieved by the order dated 28.9.2022 passed by Civil Judge (Jr.Divn.), Rajpura in Civil Suit No.273-2017 titled 'Krishan Chand Versus Jaswinder Singh and others' vide which such Court had dismissed an application for amendment of plaint filed by revisionist/plaintiff, he has approached this Court by way of filing the instant revision petition praying that the impugned order passed by the trial Court be set aside and his application for amendment of plaint be allowed.

2. Briefly stated, facts of the case are that plaintiff Krishan Chand had brought a suit for grant of permanent injunction against Jaswinder Singh and others for restraining them from interfering in his possession over the suit land measuring 20 bighas 9 biswas situated at village Hadiyatpura, Tehsil Rajpura, District Patiala. On getting notice, the defendants appeared and contested the suit. The plaintiff had filed an

application under Order 39 Rules 1 & 2 CPC for grant of ad interim injunction. That application was dismissed vide order dated 4.10.2018 observing that as per jamabandi for the year 2014-15, only name of father of plaintiff is reflected in column No.4 to establish the cultivating possession of father of plaintiff and no other document is available, which could establish prima facie that plaintiff had been cultivating the suit land with his father for the last several years. Since the plaintiff had relied upon writing dated 3.1.2017, which was executed on a plain paper, which was neither stamped nor registered, that was not relied upon in view of the compromise dated 27.6.2017 produced by the defendants bearing signatures of plaintiff. In terms of that compromise possession of suit land had been divided. The writing dated 3.1.2017 was not found to be sufficient to presume the possession of plaintiff over the suit land.

3. Thereafter, the plaintiff filed an application seeking amendment of the plaint contending that during the pendency of the civil suit legal heirs of Mukhbain Singh had sold the suit land to Smt.Harpal Kaur wife of Avtar Singh of Mohali, who had entered into an agreement with plaintiff on 19.8.2019 regarding the suit land and that the plaintiff had handed over the possession of the suit land to Smt.Harpal Kaur, then Smt.Harpal Kaur had given two acres of land to the plaintiff under the agreement dated 19.2.2019 and plaintiff wanted to amend the suit in that regard.

4. The application was opposed on behalf of the defendants and it was finally disposed of by the trial Court vide the impugned order. The operative part of the order being as under:

5. *In the considered opinion of this Court, applicant/plaintiff has filed the present application on 27.04.2022 at belated stage, as the case is pending for plaintiff evidence and cross-examination of PW1 Jaspal Kaur and PW2 Virsa Singh is pending. If this amendment was allowed, it will change the very nature of the suit and a de novo trial will start. In the present case, applicant/plaintiff came to know about the fact, when the said agreement/Chakota Nama was executed on 19.08.2019. Thereafter his appeal was dismissed vide order dated 24.11.2021 passed by the Learned Appellate Court, Patiala. In that order as well the said factum of any agreement with Harpal Kaur has not been mentioned by the applicant/plaintiff before the Learned Appellate Court, Patiala. After the dismissal of the appeal of the applicant/plaintiff he came with the new plea that he has an agreement with Harpal Kaur wife of Avtar Singh. He has kept mum for almost 1½ years when the said fact was in his knowledge. Filing of the application for amendment of plaint at belated stage shows lack of diligence on the part of the applicant/plaintiff seeking amendment. In “**Mashyak Grihnirman Sahakari Sanstha Maryadit versus Usman Habib Dhuka & Others**” 2013(2) Civil Court Cases 811 (SC), it has been held by the Hon'ble Supreme Court of India that amendment of pleadings cannot be allowed when amendment sought is belated one and is an after thought for the obvious purpose to avert the inevitable consequence. Moreover, if the application for amendment of plaint is allowed at this stage, it*

will lead to a de novo trial of the case. The proposed amendment will altogether change the nature of the suit.

6. *In view of the above discussion, no ground is made out to allow the application for amendment of plaint, as prayed for by the applicant/plaintiff and accordingly, without commenting on the merits of the case, the application under Order 6 Rule 17 CPC, 1908 filed by the applicant/plaintiff is hereby dismissed with costs of Rs. 500/- to be deposited in District Legal Services Authority by the applicant/plaintiff. Now to come up on 28.10.2022 for cross-examination of PW1 Jaspal Kaur, PW2 Virsa Singh and for remaining entire plaintiff evidence.*

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

6. The application filed by the plaintiff is not only highly belated but would change the very nature of the case. 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. In this case the trial has already started and as observed in the impugned order itself, examination-in-chief of PW1 Jaspal Kaur and PW2 Virsa Singh have already been recorded and their cross-examination is to be conducted. The agreement said to have been executed on 19.8.2019 to which the plaintiff claims to be party that means that he had knowledge of the same. He had filed the application for amendment on 27.4.2022 keeping silent for a long time. The amendment

in question is not found to be necessary for the purpose of determining the real question of controversy between the parties. The trial Court was justified in dismissing the application for grant of ad interim injunction.

7. 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.

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

14.11.2022

Brij

(H.S.MADAAN)
JUDGE**Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**