

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

244

CR-1249-2018

Date of Decision :08.02.2023

Mohan Lal and others

...Petitioners

Versus

Subhash Chander and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Lath, Advocate for the petitioners.

Mr. Gaurav Jindal, Advocate for respondent Nos.1 to 4.

Ms. Sarika Gupta, Advocate
for respondents No.6 to 8 & 10 to 12.

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Harsimran Singh Sethi, J. (Oral)

The present revision petition has been filed for setting aside order dated 21.12.2017 passed by the trial Court by which, the application of the petitioners/plaintiffs under Order 6 Rule 17 of the CPC for amendment of the plaint has been rejected by the trial Court.

Learned counsel for the petitioners/plaintiffs argues that the suit has been filed seeking declaration that petitioners/plaintiffs are in possession of the land comprising of the area mentioned in the prayer clause of the suit and to prove the same certain mutations effected are being relied upon. Learned counsel for the petitioners/plaintiffs submits that the suit is at preliminary stage as even the evidence is yet to be recorded and by way

of an amendment, the petitioners/plaintiffs want to bring on record the

factum of mutation No.568 entered on 05.01.1983 so as to support the claim as raised in the said suit and though, the said prayer has already been accepted by some of the defendants by raising no objection but defendants No. 6 to 8 and 10 to 12 are objecting to the said plea of the petitioners/plaintiffs.

The trial Court after considering the facts, declined the prayer of the petitioners/plaintiffs for amendment of the plaint vide order dated 21.12.2017 on the ground that the petitioners/plaintiffs could have been diligent at the time of filing of the civil suit and as petitioner/plaintiff has already appeared as PW-1, though, is yet to be cross-examined hence, at the belated stage, the suit cannot be allowed to be amended. The said order of the trial Court is under challenge in the present civil revision petition.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Keeping in view the averments made in the application, petitioners/plaintiffs only wants to bring on record the factum of mutation No.568 entered on 05.01.1983 so as to support the claim that they are owner in possession of the land in question for which, the declaration is being sought. Though, it is correct that petitioners/plaintiffs could have been diligent to incorporate the said fact at the time of filing of the civil suit but as the trial is at preliminary stage, no prejudice will be caused to the parties in case prayer of the petitioners/plaintiffs is allowed at this stage as petitioners/plaintiffs has undertaken before this Court that they are ready to pay cost for the delay which has been caused.

Keeping in view the fact that evidence is yet to be recorded and suit is at preliminary stage and the petitioners/plaintiffs only want to include

the factum of mutation No.568 entered on 05.01.1983 in the plaint to support their claim in the suit, the prayer of the petitioners/plaintiffs cannot be treated to be at belated stage, the ground which has been taken by the trial Court to dismiss the prayer of the petitioners/plaintiffs.

Consequently, impugned order dated 21.12.2017 passed by the trial Court is set aside. Application filed by the petitioners/plaintiffs under Order 6 Rule 17 of the CPC seeking amendment of the suit is allowed. The respondents be given an appropriate opportunity to rebut the same by way of filing written statement. For the delay, which has occurred due to the filing of the present revision petition, the petitioners/plaintiffs are burdened with cost of Rs.10,000/- to paid to the respondents No.6 to 8 and 10 to 12.

With regard to the argument of the learned counsel for the respondents that suit will be barred by limitation, the same will be adjudicated by the competent Court of law, keeping in view the objections raised in the written statement and issues framed on the basis of the same.

Present civil revision stands allowed in above terms.

February 08, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No