

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

CR-7444-2019(O&M)

Date of decision:-24.04.2023

Suresh and another

...Petitioners

Versus

Ram Chander and others

...Respondents

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

Present: Mr.Sudhanshu Khanna, Advocate for
Mr.P.S. Khurana, Advocate
for the petitioners.

None for the respondents.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 19.9.2019 passed by Civil Judge(Jr.Divn.), Bahadurgarh vide which in a pending civil suit titled 'Ram Chander Versus Dharambir and others', an application under Order 6 Ruel 17 CPC filed by the defendants, seeking amendment of the written statement had been dismissed.

2. Briefly stated, facts of the case are that during the pendency of the civil suit in question, the defendants had filed an application seeking amendment of the written statement to take a plea that ancestors of the plaintiffs, namely, Dharam Singh, Gyani Ram and Siriya etc. had exchanged their land with Prithi son of Palle vide mutation No.3396 dated 2.7.1980 and as per the said mutation khasra Nos.2756 to 2760 were allotted to ancestors of the plaintiffs, whereas khasra No.3639 was allotted

to Prithi son of Palle etc.; after the said exchange the ancestors of the plaintiff became owners in possession of khasra No.2756 to 2760 and constructed their houses over that area as shown in the site plan and further these khasra numbers are not situated in the *lal dora* of the village Asaudha Todran in the north west side of old abadi deh khasra No.2931. The defendants further wanted to plead that civil suit titled as 'Parbhu Versus Chander etc.' regarding the property in question had already been decided on 4.4.1991 by the Court of Sub Judge Ist Class, Bahadurgarh and appeal filed against that judgment and decree was decided in favour of father of the defendants, whereas regular second appeal is pending in the High Court. The defendants wanted to take plea that they are owners in possession of the disputed portion and to amend para Nos.2 and 3 of their written statement accordingly submitted that proposed amendment is necessary to decide the real question of controversy between the parties.

3. The application was contested vehemently. It was dismissed vide the impugned order. For ready reference, the operative part of the order is being reproduced as under:-

5. After hearing the rival submission of learned counsels for both the parties and perusal of material on record, it transpires that the present suit has been filed by the plaintiffs seeking relief of decree for permanent injunction restraining the defendants from blocking the street in question fully described in para no. 3 of the plaint and marked by letters ABCD shown with red colour in the site plan by way of raising construction or otherwise. It is pertinent to mention that the present application under Order 6 Rule 17 CPC has been

moved by the applicants/ defendants at the stage of rebuttal evidence, as such since trial had already been concluded as such, the applicant is required to aver due diligence on his part for not disclosing the facts regarding exchange deed as mentioned in the application, at the time of filing of written statement. However, applicant fails to plead in the application as to why the above stated facts were not mentioned in the written statement at the time of filing written statement. It is well settled law that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and no such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in the controversy between the parties. The proviso to order 6 Rule 17 CPC provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that despite of the diligence the party could not have raised the matter before commencement of trial. In the instant case, the applicant fails to prove any due diligence on his part for not disclosing the facts mentioned in the application under Order 6 Rule 17 CPC when the written statement was filed by the defendants. Due diligence means reasonable diligence which a prudent men would exercise in the conduct of his own affairs. Reliance in this regard placed upon case title Chander Kanta Basant Vs. Rajnder Singh Anand, 2008 (5) SCC 117.

6. Secondly, the applicant/defendant alleged that when the

defendants obtained copies of revenue record i.e. mutation no. 3396 dated 02.07.1980 then they came to know that the ancestors of the plaintiffs namely Dharam Singh, Gyani Ram and Siriya etc. exchanged their lands from Sh. Prithi S/o Palle vide mutation no. 3396 dated 02.07.1980 and as per mutation, khasra no. 2756 to 2760 allotted to ancestors of the plaintiffs and khasra no. 3639 allotted to Sh. Priti S/o Palle, etc. In this respect, it is observed that the said mutations were entered in the year 1980 as such, it can well be held that the revenue record was available at the time of filing of written statement. Hence, it could not be possible that the same would not be within the knowledge of applicants at the time of filing of written statements. Hence, there was no due diligence on the part of defendants. Since, the trial has already been concluded and allowing of the present application at this stage would delay the proceedings and cause prejudice to the respondents/plaintiffs which cannot be compensated in terms of costs. Therefore, at the stage allowing of the present application would change the nature of the suit.

7. Accordingly, keeping in view the facts and circumstances in the present case, the present application moved by applicants/defendants under Order 6 Rule 17 C.P.C. stands dismissed being devoid of merits subject to the costs of Rs. 500/- to be deposited in Sub-Divisional Legal Services Authority. Any observation made in this order shall not be construed upon merits.

4. Such order left the defendants aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents No.1 and 2 only, who initially put in appearance through counsel. However, there is no representation on their behalf.

5. I have heard learned counsel for the petitioners besides going through the record and I find that there is absolutely no merit in the revision petition.

6. Order 6 Rule 17 CPC deals with the topic of amendment of pleadings. It provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

The proviso makes the things clear dilating that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. The application in this case has been filed quite belatedly at the stage of rebuttal evidence when the parties had already concluded their evidence. Therefore, in view of the proviso 6 Rule 17 CPC, the same was not maintainable and was rightly rejected. The reasoning given for belated filing of the application is least convincing and cannot be accepted. The dispute between the parties is basically with regard to the passage through the street in question and proposed amendment is certainly not necessary

for the purpose of determining the real question of controversy between the parties.

8. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. 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.

9. Finding no merit in the revision petition, the same stands dismissed.

10. The interim order dated 28.11.2019 passed by this Court staying passing of final order/judgment by the trial Court thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

24.4.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No