

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****264****CR-2797-2018(O&M)****Date of decision: 27.11.2025****Punjab National Bank****...Petitioner(s)****Vs.****Davinder Kaur & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Amit Kumar Goyal, Advocate
for the petitioner.

*********NIDHI GUPTA, J.**

Present Revision Petition has been filed by the plaintiff under Article 227 of the Constitution of India, laying challenge to the order dated 16.11.2017 (Annexure P5) passed by the learned Civil Judge (Junior Division), Kapurthala whereby application filed by the petitioner under Order 1 Rule 10 read with Order 6 Rule 17 and Section 151 CPC for impleading parties as defendants, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that the petitioner was constrained to file the above-said applications at a belated stage of trial as new facts had come to the knowledge of the petitioner only prior to filing of the said applications. It is submitted that the defendants had filed written statement in which they pleaded that the deceased Avtar Singh borrower has sold his land measuring 16K-1M during his lifetime to



the different persons in the joint land but they did not give any detail of the persons in whose favour Avtar Singh borrower sold his share out of the joint land including the land mortgage with the plaintiff bank.

3. Further, defendant no.2 Manmohan Singh s/o late S. Mohinder Singh tendered his affidavit in the shape of Examination in Chief in his evidence and also tendered jamabandi for the year 2005-06 of the suit land issued by Halqa Patwari on 11.11.2016, wherein entry regarding mortgage of the suit land with the plaintiff bank is also mentioned. The plaintiff then made thorough investigation in the matter and came to know that deceased Avtar Singh borrower has sold his share out of the joint land including the land mortgage with plaintiff bank to various persons and the entries of these are reflected with red ink in the Jamabandis.

4. Ld. counsel accordingly prays that impugned order be set aside.

5. No other argument is made on behalf of the petitioner. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the petitioner-Bank/plaintiff.

6. The petitioner had filed suit for recovery of Rs.5,58,627/- against the defendants/respondents No.1 and 2 dated 01.10.2013 (Annexure P1). The defendants had filed written statement dated 28.08.2014 (Annexure P2) to the above-said Civil Suit. 3 years thereafter, the petitioner had filed the instant application under Order 1 Rule 10 read with Order 6 Rule 17 and Section 151 CPC for impleadment of proposed defendants No.3 to 34 and for



amendment of plaint on 24.01.2017 (Annexure P3). The defendants had filed reply to the said application on 27.04.2017 (Annexure P4). Vide the impugned order dated 16.11.2017 (Annexure P5), said applications of the petitioner have been dismissed, for the findings and observations as recorded in Para 5 of the impugned order, which reads as follows:-

*“5. After hearing both the counsel, I am of the view that the application in hand deserve dismissal on two grounds. Firstly, the present amendment application has been filed at the fag end of the trial. Proviso to the order 6 Rule 17 CPC puts a mandate upon the court to not to allow such amendment after the trial has began, it finds that the party could have raised the pleading by due diligence at an earlier point of time. It was held by **Hon'ble Supreme Court in Salem Advocate case, that by the 2002 amendment**, which added the Proviso to the order 6 Rule 17 CPC, the burden of proof has been shifted upon the applicant who makes the applications for amendment after the trial has commenced to prove that despite due diligence he could not have raised the issue before commencement of trial. This is for the purpose of preventing frivolous application to delay the proceedings. In **Ajenderparsad Ji N. Pande and another Versus Swami Keshavprakeshdasji N. & Others, 2007 AIR SCW 513**, the Hon'ble supreme Court considered the scope of amendment in order VI Rule 17 CPC by adding a proviso to the effect that the amendment application should be filed, prior to the commencement of the trial. The Hon'ble Apex Court held that trial commences when the issues are settled and the case is set down for recording of evidence. The Apex Court observed that unless the party satisfies the Court that inspite of due deligence,*



the issued could not be raised in the suit or proceedings before the commencement of the trial, the amendment should not be allowed. In view of this authority there was burden upon the applicant/plaintiff to prove that despite due diligence, he could not have raise the issue before commencement of trial. But the perusal of pleading reveals that defendant in the written statement has took the specific objection that the suit is bad for non-joinder of the necessary party. He specifically stated in the written statement that the deceased/borrower during his life time has sold the land measuring 16 Kanals 1 Marla to different person mentioned in the Jamabandi. Despite this plaintiff Bank remained quite for long period of time and continued with the present suit and now when the trial is at its fag end, the plaintiff bank has filed an application for the amendment of pleading. Facts sought to be added by the purposed amendment were well within the knowledge of the plaintiff/ applicant. No plausible explanation has been assigned as to why the purposed amendment was not sought after the filing of the written statement by the defendants.

Secondly, the purposed amendment would change the nature of the suit. A prayer has been made that the decree for declaration to the effect that the sale deed/ transfer deed/mortgage deed and mutations allegedly executed in favour of different persons by the borrower/deceased Avtar Singh are void, illegal, inoperative, ineffective and non-binding upon the right of the plaintiff bank be passed in the favour of plaintiff bank. A further prayer has been made that decree for declaration to the effect that rapat number 1160 allegedly entered in revenue record qua redemption of land mortgage with plaintiff bank is wrong, void,



*illegal, inoperative, ineffective as the loan was never cleared by deceased Avtar Singh and defendant Nos.1&2. In **Sampat Kumar Versus Ayyakannu and another (2002) 7 SCC 559**, the Hon'ble Supreme Court held that any amendment seeking to introduce a new cause of action, which arose during the pendency of the suit, may be permitted in order to avoid multiplicity of suit. But it should not change the basic structure of the suit. In **Bharat Karsondas Thakkar Versus M/S Kiran Construction Company and others, 2008 AIR SCW 3192**, Hon'ble Supreme Court held that the amendment is not permissible if it changes the nature of suit. The present suit has been filed for the recovery of the loan amount. To my mind the purposed amendment would change the basic structure and nature of the suit and denovo trial would start which is not permissible in view of authorities referred above. With these observations present application filed by the plaintiff stands dismissed. However, nothing mentioned in this order would effect the main merits of this case. Now the case stands adjointed to 29.11.2017 for defendant evidence."*

7. Ld. counsel for the petitioner is unable to dispute or controvert the aforesaid facts and findings. As such, present petition is **dismissed**.

8. Pending application(s) if any also stand(s) disposed of.

27.11.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No