

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

CR-4935-2018(O&M)

Date of Decision: July 09, 2025

Balbir Singh Deceased through his LRs and another

...Petitioners

Versus

Swaran Dass deceased through LRs and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.G.S.Sirphikhi, Advocates
for the petitioners.

Mr.Harminder Singh, Advocate
for respondents No.1 (I) to (iv) & (viii) and 2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 16.01.2018 passed by learned Rent Controller, whereby, an application under Order 6 Rule 17 and Section 151 CPC, for seeking amendment of the petition was dismissed.

The essential facts having bearing on the application for amendment of the petition, are as follows:-

That, initially, the petitioners-landlords had filed an ejectment petition against Swaran Dass, Ashok Kumar and Ramesh Kumar, vis-a-vis the shop marked as A B C D, as shown in the site plan and bounded as detailed in the headnote of the application, copy whereof is Annexure P-1. However, in

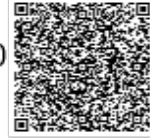
**CR-4935-2018****-2-**

pursuance of notice issued, the respondents-tenants did not make appearance and as such, they were proceeded against ex-parte. Thereupon, the petitioners-landlords had led evidence

Learned Court had concluded about the petitioners, to have failed to prove the relationship of landlord and tenant between them and thus, had dismissed the ex-parte ejectment petition.

Being aggrieved, the petitioners-landlords had filed an appeal and during the pendency of the appeal, they also filed an application for additional evidence, to tender into evidence, copies of the documents, relating to the ejectment petition filed qua other tenant namely Ravinder Kumar s/o Baldev Raj, which was allowed. Thereupon, learned Appellate Court, vide judgment dated 16.09.2016, had dealt both with the application for additional evidence as well as the appeal and thereafter, allowed the application and had set aside the impugned judgment and remanded back the case to the Rent Controller, for fresh decision on merits, in the light of the documentary evidence to be produced by the appellants-petitioners (landlords) and also ordered that the respondents-tenants shall be permitted to produce the evidence, to rebut additional evidence. Upon remand of the case, it was also observed by the Court that the respondents will be enabled to file their written statement.

In view of the such order passed by the Appellate Court, the case was remanded back to the Rent Controller. When the case was pending before the Rent Controller, an application under Order 6 Rule 17 CPC was filed at the instance of the petitioners-landlords, for seeking amendment of

**CR-4935-2018****-3-**

the ejectment petition. Vide proposed amendment, the petitioners-landlords wanted to assert about the shop in question, to be part and parcel of Khasra No.55R/12/1, situated at village Batala Garbi, Tehsil Batala and also wanted to make addition of paragraph No.3-A, in the petition, already filed, which is detailed in the application itself, wherein, the background of the property initially owned by Harbhajan Singh and Gurcharan Singh and having sold the same further to Ashwani Kumar and then Ashwani Kumar etc. had sold the shop to the present petitioners, who are the then owners of the shop in question of Khasra No.55R/12/1.

However, in reply, the respondents-tenants resisted the claim. It was asserted that the ejectment petition was filed way back in the year 2003 and then the respondents were proceeded against ex-parte, but however, the ex-parte petition was dismissed by the Rent Controller. An appeal was filed, but however, luckily, the notice was got issued about the appeal to them, as a result whereof, they had joined the proceedings and the Appellate Court had remanded back the case to the Rent Controller, with a direction to take the written statement of the respondents and to decide the matter afresh.

Also, in the reply, much emphasis was laid upon the application having been filed after a period of 14 years. It was denied that the proposed amendment is of explanatory nature.

After hearing learned counsel for the parties and on appraisal of material brought on record, vide impugned order, the application for amendment was dismissed.



Thus, the revision petition in hand.

Upon notice, respondents made appearance through counsel.

Order 6 Rule 17 CPC provides for the procedure to amend the pleadings, be it plaint or written statement. For an amendment to be allowed, the parties seeking amendment has to be establish that despite his due diligence, he could not take up the pleas, at the relevant time and could not move an application for amendment earlier. As emphasized by the counsel for the petitioners, very true, the Court, while dealing with the prayer for amendment of pleadings, should avoid hyper-technical approach and that, delay in applying for amendment alone, is not a ground to disallow the prayer. Also, it is very correct that the amendment, which is sought to enable the Court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, should be allowed.

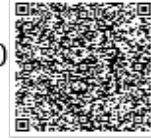
However, at the same time, it is also significant to note that the Court while dealing with the prayer for amendment, also has to consider the stage, at which the said application has been filed and the proceedings having conducted by the Courts, prior to the filing of the application and subsequent to the decision rendered by the trial Court, at first instance and also the observation made by the Appellate Court. However, the underlying thread for consideration of the application is that there should not be any malafide on the part of party, filing an application for seeking amendment of the pleadings.

However, tested on the aforesaid touchstone, adverting to the case in hand, it is pertinent to mention that the bonafide intention, as such, is

**CR-4935-2018****-5-**

not writ large, on the part of the petitioners. Undisputedly, in the application for ejectment filed in the year 2003, the shop, about which the petitioners assert themselves to be landlords, was described in the site plan annexed as A B C D and the description was further given by way of boundaries. Nowhere, it was mentioned about the said shop to be existing in any Khasra number. Very true, as pointed out, inclusion of Khasra number can be allowed by way of amendment, but however, to consider the same, it is relevant to make reference to the decision rendered by the Rent Controller, at first instance on 20.07.2012, whereby, ex-parte ejectment petition was dismissed. Therein, the manner in which, the petitioners traced themselves to be the owner of the property was carefully considered by Rent Controller. Undisputedly, the shop in question was earlier ownership of Harbhajan Singh and Gurcharan Singh, who as per the version of the petitioners, had sold the shop in dispute in favour of Ashwani Kumar s/o Nanak Chand and Rajiv Soni s/o Satpal and thereupon, it was sold to the present petitioners vide registered sale deed dated 26.11.2002.

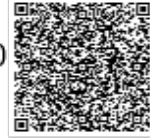
However, on appraisal of the evidence, learned Rent Controller had observed that the ownership, as such, was not appropriately traced. The sale deeds were not duly proved, though, the same were placed on record and copies of the same were Ex.A1 and A2. It was also observed that no reasonable explanation has been put forward by the petitioners for non-production of the original sale deeds and furthermore, while holding that the sale deeds have not been duly proved, it was observed that even the photocopies of the sale deeds, which are coming on record, reveal about the

**CR-4935-2018****-6-**

same to be relating to chunk of agricultural land, measuring 7 Kanal, detail whereof, is also given in the said judgment and the same was sold by Harbhajan Singh and Gurcharan Singh and subsequently, it was sold by Ashwani Kumar and Rajiv Soni, in favour of the present petitioners. Also, further specifically it was observed by the Rent Controller that none of the sale deeds Ex.A1 and A2, find mention of any shop, sold by any of the predecessors-in-interest of the present petitioners, nor even the boundaries of the shop in dispute as mentioned in the headnote of the petition, finds any mention in any of the sale deeds, proved on record by the petitioners, in order to prove the existence of relationship of landlord and tenant between them and the respondents.

Also, it was observed in the headnote of the petition, that no Khasra number has been mentioned by the petitioners. In the light of the same, it was observed that the petitioners have not been able to connect the property detailed in the headnote of the petition, to be the property as described in the sale deeds and consequently, it was observed that they fail to prove the relationship of landlord and tenant between them and as such, the petition was dismissed. The vernacular as well as the translated copies of the sale deeds in question, are coming on record. Close perusal of the same reveals that there is no mention of existence of the shop in the land, which was purchased by the petitioners from Ashwani Kumar and Rajiv Soni. Even, the Khasra number of the land sold has been given and its nature has been mentioned as *chahi* land.

In the light of the same, the existence of the shop, as such and tracing

**CR-4935-2018****-7-**

the ownership by virtue of sale deed is not evident. It is solely with the purpose to adjust the pleadings, as per the observations made by the Rent Controller, amendment has been sought.

Considering the said observations, petitioners now intend to seek amendment of the petition. No doubt, as mentioned, an application for additional evidence has been allowed by the Appellate Court and the case was remanded back, but however, this *ipso facto*, does not make out a ground for seeking amendment of the pleadings only with a purpose to adjust the claim to counter the findings, as observed by learned Rent Controller.

At the time of filing of the appeal, the petitioners had an opportunity to file an application for amendment of the pleadings, together with an application for additional evidence, but however, they did not do so. So far as, subsequent change of circumstances, is concerned, it is pertinent to mention that the petitioners want to plead about the ejectment petition of Ravinder Singh, the other tenant of the shop, adjoining to the shop in question, having been allowed by the Court. It is further pertinent to mention that copy of the judgment of the ejectment petition is placed on record as Annexure P-4. It was not a decision rendered on merits, more particularly, considering the contents of paragraph No.6 of the said judgment.

This Court is consciously refraining itself from making any observation, with regard to impact of this judgment over the claim of the petitioners. Even if, there is change of circumstances, on the basis of this



judgment passed qua other tenant, the same as such, can obviously be produced in evidence and there is no such necessity to plead about the change of circumstances, by way of seeking amendment, as the circumstances, as prevalent, at the time of filing of the ejectment petition, are to be considered.

In view of the aforesaid observations, learned Rent Controller has very correctly dismissed the application for amendment. The impugned order calls for no interference. Hence, the revision petition sans merit and is hereby dismissed.

July 09, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No