



CR-423-2025 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR-423-2025 (O & M)
Date of decision:13.02.2025

JOGINDER SINGH

...PETITIONER

VS.

GURPREET SINGH AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Mr. K.S. Kahlon, Advocate
for respondents No.1 to 3.

SUVIR SEHGAL, J.

1. This revision petition has been filed under Article 227 of the Constitution of India assailing order dated 08.01.2025, Annexure P-6, passed by the learned Civil Judge (Junior Division), Batala, whereby an application filed under Order 6 Rule 17 CPC by the petitioner/defendant No.1 for amendment of the written statement, has been dismissed.

2. Counsel for the petitioner has contended that the Trial Court has not recorded any finding that the amendment is not necessary for the just decision of the controversy on merits and has erred in declining the



application. He has placed reliance upon **Md. Sajid Khan and others Vs. M/s Ashutosh Roy Prafulla Kumar Roy and others 2019 (2) Rent Law Reporter 168; M/s Ram Parkash Rakesh Kumar Vs. M/s Crown Associates and another 2022 (1) RCR (Rent) 473** and **Atma Ram and others Vs. Karmjeet Kaur and others 2023 (4) Civ.CC 80** to urge that as the proposed amendment does not change the nature of the proceedings, it deserves to be permitted even though it has been sought after the commencement of the trial. It is his argument that the provisions of Order 6 Rule 17 CPC have to be liberally construed and a plea of adverse possession, which is a legal plea, can be permitted to be taken at any stage of the proceedings. Reference has been made by him to the judgments of this Court in **Bhajan Singh Vs. Sati Brahamana 2006 (1) RCR (Civil) 113** and **Joginder Singh and another Vs. Harbans and others 2006 (2) RCR (Civil) 120.**

3. Opposing the petition, counsel for the respondent has made a reference to Order 6 Rule 17 CPC to assert that an application for amendment, which is moved after the commencement of the trial, without showing due diligence cannot be accepted. He has supported the order under challenge.

4. I have heard counsel for the parties and considered their respective submissions.

5. Plaintiffs/respondents No.1 to 3 filed a suit for declaration to the effect that they are owners in possession of their respective share in land measuring 4 kanals 11 marlas situated in Village Aima, Tehsil Batala, District Gurdaspur as per jamabandi for the year 2015-16 and that a



mutation entered in the name of defendant No.1 with the connivance of the Halqa Patwari is liable to be set aside. Upon being served, suit is being contested on merits by defendant No.1 by filing a written statement, Annexure P-2, wherein he has also raised various preliminary objections. He has *inter alia* averred that he had purchased 4 kanals out of the suit land by virtue of two different sale deeds and is in possession of the purchased land. After the plaintiffs filed replication, Trial Court framed issues and both the parties led their evidence in support of their respective claims. During the course of arguments, application, Annexure P-4, has been filed by defendant No.1 for amendment of the written statement averring that certain additional material facts and legal grounds, which are crucial for the adjudication of the case, came to his knowledge and are necessary to be incorporated in the written statement. New pleas regarding adverse possession, concealment of family partition, misrepresentation and limitation were sought to be introduced. After contest, this application has been declined vide order under challenge in the instant petition.

6. After the trial has commenced, amendment to the pleadings cannot be permitted in a casual manner. Proviso to Order 6 Rule 17 CPC provides as under:-

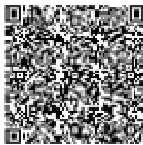
“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.”



7. In *Vidyabai and others Vs. Padmalatha and another* (2009) 2 SCC 409, Supreme Court has held that the proviso is couched in a mandatory form. Court's jurisdiction to allow an application for amendment is taken away unless the conditions precedent therefor are satisfied viz that it must come to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. Unless this condition is satisfied, application for amendment cannot be acceded to.

8. Adverting to the facts of the present case, it is evident that the issues were framed by the Trial Court on 18.07.2023. After both the parties had led their evidence, the plaintiff advanced his arguments and the proceedings were fixed for arguments by the defendants when the application, Annexure P-4, for the amendment of the written statement was moved. Merely stating that some vital facts and legal grounds have come to the notice of the applicant, is not a sufficient ground for permitting the amendment. Petitioner has failed to show that he had exercised due diligence and for reasons beyond his control, he could not plead these facts or grounds in the written statement filed by him. Petitioner intends to incorporate new pleas, which would result in the re-trial, which is impermissible. The judgments relied upon by the petitioners are not applicable to the facts of the present case. This Court does not find any perversity or illegality in the order passed by the Trial Court.

9. Petition being devoid of merit, is dismissed with no order as to cost.



10. As the main case has been decided, pending application stands disposed off.

13.02.2025 (SUVIR SEHGAL)
sheetal JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No