



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

134 **Date of decision: 19.08.2025**

1. CR-5461-2025 (O&M)

Darshan Singh and another

...Petitioner(s)

Vs.

Gurdev Singh and others

...Respondent(s)

AND

2. CR-5522-2025 (O&M)

Darshan Singh and another

...Petitioner(s)

Vs.

Gurdev Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. G.S.Salana, Advocate for the petitioners.

NIDHI GUPTA, J.

CR-5461-2025

Present Civil Revision Petition has been filed by defendants No. 1 and 2 against the order dated 18.07.2025 (Annexure P-9), passed by the learned Additional Civil Judge, Senior Division, Payal; whereby application dated 09.07.2025 (Annexure P-6) filed by the petitioners under Order 14 Rule 1 CPC for framing of additional issue, has been dismissed.

CR-5522-2025

Present Civil Revision Petition has been filed by defendants No. 1 and 2 against the order dated 18.07.2025 (Annexure P-10), passed



by the learned Additional Civil Judge, Senior Division, Payal, whereby application dated nil (Annexure P-5) filed by the petitioners under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of written statement, has been dismissed.

2. Both the above said Civil Revision Petitions are being disposed of by this common order as the facts, issues and parties in both the petitions are same. For the sake of facility, facts are being drawn from CR-5461-2025 titled as *“Darshan Singh and anr. vs. Gurdev Singh and others.”*

3. Brief facts of the case are that the plaintiffs/respondents No. 1 and 2 herein had filed a Civil Suit dated 17.08.2016 (Annexure P-1) for possession of suit land; **and** for mandatory injunction directing defendant No. 7 to change the revenue entries in Khasra Girdawari; **and** for mandatory injunction directing defendants No.1 and 2 to deposit in Court the income derived from the suit land owned by the plaintiffs and defendants No.3 to 6; **and** suit for permanent injunction restraining defendants No. 1 and 2 from illegally and in unauthorized manner delivering possession of the suit property to someone else during pendency of the Civil Suit.

4. The petitioners had filed written statement dated 07.01.2017 (Annexure P-2) in the said suit. Vide judgment and decree dated 01.09.2022 (Annexure P-3), the suit of the plaintiffs was partly decreed to the effect that plaintiffs and defendants No. 3 to 6 were declared to be joint owners of the suit land; and defendants No.1 and 2/petitioners



were restrained from delivering possession of suit land to other persons except the plaintiffs. Suit of the plaintiffs for relief of mandatory injunction seeking direction to petitioners to deposit in the Court the income derived from the suit land was dismissed; however, defendant No. 7 was directed to make necessary correction in the revenue record as per the judgment and decree. The said judgment and decree was challenged by the petitioners before the learned additional District Judge, Ludhiana. Vide order dated 22.05.2025 (Annexure P-4), appeal of the petitioners was partly allowed, and matter was remitted back to the learned trial Court with a direction to give findings on all the issues.

5. It is at this stage after the matter was reminded back to the learned trial court, that the petitioners first filed an application dated Nil under Order 6 Rule 17 CPC read with Section 151 CPC (Annexure P-5 in CR-5522-2025) seeking amendment of their written statement (Annexure P-2). Petitioners then filed the present application dated 09.07.2025 (Annexure P-6) under Order 14 Rule 1 CPC seeking framing of additional issue. Plaintiffs filed reply dated 16.07.2025 (Annexure P-7) to the petitioner's amendment application under Order 6 Rule 17 CPC; and reply dated 16.07.2025 (Annexure P-8) to the petitioners' application under Order 14 Rule 1 CPC. Vide the two separate impugned orders of even date i.e. 18.07.2025, the aforesaid two applications of the petitioners have been dismissed. Hence, the present CR No. 5461 of 2025 has been filed by the petitioners against the dismissal of their application under Order 14 Rule 1 CPC for framing of additional issue;



and CR No. 5522 of 2025 has been preferred by the petitioners against dismissal of their application under Order 6 Rule 17 CPC for amendment of their written statement.

6. It is *inter alia* submitted by learned counsel for the petitioners that the learned trial Court failed to appreciate that the decision on the issue i.e. ***“Whether the suit of the plaintiff is properly valued for the purpose of court fee and jurisdiction? OPP”*** is necessary and material for the proper, effective and final jurisdiction of the case. However, no such issue has been framed. It is submitted that the above said issue was necessary to be framed as the petitioners had taken a specific preliminary objection No. 7 in their written statement to the effect that suit is not properly valued for the purpose of court fee and jurisdiction, and ad valorem court fee was not being paid on the plaint.

7. It is further submitted that as per the provisions of Order 14 Rule 1 CPC, material proposition of law and fact affirmed by the one party and denied by other, forms part of a separate, distinct independent issue. Therefore, in view of the objection raised by the petitioners in their written statement, it was incumbent upon the learned trial court to have framed the above issue. As such, application of the petitioners for framing of the above additional issue has been wrongly dismissed.

8. Learned counsel further submits that even the dismissal of the application of the petitioners under Order 6 Rule 17 CPC for amendment of their written statement, has been wrongly dismissed as,



by way of the proposed amendment, the petitioners had sought to take a legal objection to the plaint; thereby demonstrating that jurisdiction of civil court is expressly barred under Section 76 of the Punjab Tenancy Act, 1887. It is submitted that the said objection, though material, could not be taken at the time of filing written statement due to lack of proper legal advice by the previous counsel. As such, amendment of written statement was necessary for proper adjudication of the matter. Moreover, the amendment was only formal in nature and will not, in any manner, change the nature of defence because it is a legal objection and no fresh evidence is required to be led in support of the proposed amendment. It is submitted that however, the learned trial Court without appreciating the above said facts, has dismissed the application of the petitioners vide order dated 18.07.2025 (appended as Annexure P-10 with CR-5522-2025).

9. Learned counsel for the petitioners further submits that the impugned order dated 18.07.2025 passed by the Id. Trial Court is illegal, erroneous, perverse and without jurisdiction. The judicial error committed by the Id. Trial Court is apparent on record. The plea of jurisdiction goes to the very root of the case and as per settled law, the plea of law of jurisdiction can be taken at any stage. Any judgment or decree passed by the court without jurisdiction, is a nullity and void ab initio. The petitioners/ defendants want to take the plea of bar of suit before the Id. Civil Court by statutory provisions of Section 76 of Punjab Tenancy Act, 1887 that goes to root of the case and the Id. Trial Court



manifestly erred by rejecting the application for amendment of the written statement under Order 6 Rule 17 CPC resulting in miscarriage of justice. It is accordingly prayed that the impugned orders be set aside.

10. No other argument is raised on behalf of the petitioners.

11. I have heard Id. counsel and perused the case file in detail.

12. I find no merit in the submissions made on behalf of the petitioners. Vide order dated 22.05.2025 (Annexure P-4) learned Additional District Judge, Ludhiana, had remanded the case back to the learned trial Court for limited consideration as follows: -

“Resultantly, the present appeal is partly allowed, and the matter is remitted to the learned trial court/its successor court with the direction to give findings on all the issues. It is made clear that the court is not required to take further evidence for deciding the suit. It is also desirable that the trial court/its successor court shall decide the suit after hearing the parties within two months after receipt of file. The parties through their counsel are directed to appear before the trial court or its successor court on 2.7.2025. Trial court record be returned alongwith a copy of this judgment. Appeal file be consigned to the record room.”

13. From a bare reading of the above, it is clear that the matter was remanded back to the learned Trial court for limited purpose to give findings on all issues in terms of Order 14 Rule 2 CPC. It has been categorically directed by the learned first appellate Court that no further evidence will be taken by the learned trial Court in deciding the suit within 2 months. No liberty was granted, even no liberty was sought by



the petitioners to frame additional issue. Thus, application of the petitioners under Order 14 Rule 1 CPC, was rightly dismissed.

14. As regards the amendment, it has been admitted by learned counsel for the petitioners before this Court that the objections now sought to be raised by the practitioners, could have been raised in the written statement originally filed by them. However, they have inadvertently failed to do so. Clearly, the same does not fall within the ambit of provision of Order 6 Rule 17 CPC, which read as follows:-

“17. Amendment of pleadings. -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:

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 trial.”

15. Vide recent judgment dated 29.2.2024, the Hon’ble Supreme Court in **Basavaraj v. Indira (SC) : Law Finder Doc Id # 2510571** has held that:

“Amendment of pleadings – Oversight cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial.”.

16. In another judgment, the Hon’ble Supreme Court in **Pandit Malhari Mahale v. Monika Pandit Mahale, (SC) : Law Finder Doc Id # 1691426** has held as under: -



“Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Plaint - Amendment application filed after evidence begun - In absence of any finding that Court is satisfied in spite of due diligence, party could not introduce amendment before commencement of trial - Therefore, amendment of plaint unsustainable and set aside.”

17. In **“K.B. Sharma Vs. Shri Keerti Karan Dharni” (P&H) Law**

Finder Doc ID # 205192, this Court has held that: -

“A. Civil Procedure Code, 1908, Order 6, Rule 17, Proviso - Amendment of written statement - After the commencement of trial, amendment of pleadings cannot be allowed, until and unless, the party seeking amendment establishes that despite due diligence, it could not raise the pleas sought to be incorporated by way of amendment - Where defendant was already in knowledge of such pleas at the time of filing the original written statement - Amendment cannot be allowed.”

18. In view of the above clear facts and legal position, I find no ground is made out to interfere in impugned orders dated 18.07.2025.

Both Civil Revision Petitions stand **dismissed**.

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

19.08.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No