

(2010) 02 P&H CK 0155

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Gurnam Singh Sodhi and Others

APPELLANT

Vs

Amarjit Singh Sodhi and Others

RESPONDENT

Date of Decision: Feb. 10, 2010

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Plaintiffs have filed the instant revision petition under Article 227 of the Constitution of India challenging order dated 15.01.2010 (Annexure P-1) passed by learned Civil Judge (Junior Division), Zira, vide which application (Annexure P-3), moved by the plaintiffs for amendment of plaint, has been dismissed by the trial court.

2. The plaintiffs have filed suit relating to land of Village Sibbian, Tehsil Moga. By way of amendment of plaint, the plaintiffs also want to add land of Village Kaleke, Tehsil Moga.

3. I have heard learned Counsel for the petitioners and perused the case file.

4. Learned Counsel for the petitioners, relying on a judgment of Hon'ble Supreme Court in the case of State Bank of Hyderabad v. Town Municipal Council reported as 2007 (1) R.C.R. (Civil) 416, contended that proviso to Rule 17 of Order 6 of the CPC (in short ♦ CPC), as added by Amendment Act of 2002, is not applicable to the instant suit as the same was instituted in the year 1998 i.e. before the introduction of aforesaid proviso by amendment of CPC. There is considerable merit in the contention. In view of judgment of Hon'ble Apex Court, the aforesaid proviso to Rule 17 of Order 6 is not applicable to the amendment of plaint in the instant suit

and therefore, amendment application cannot be declined on the ground that it has been moved after commencement of the trial.

5. Learned Counsel for the petitioners next contended that the amendment cannot be declined merely on the ground of delay. In support of this contention, learned Counsel for the petitioners has relied on a judgment of this Court in the case of *Satguru Sri Jajit Singh Ji v. Gurjeet Singh alias Harcharan Singh and Ors.* reported as 2006 (2) R.C.R. (Civil) 71. In that case, however, no new property was sought to be added in the suit and only description of the suit property was sought to be clarified by mentioning khasra number thereof, but the suit property remained the same. In the case in hand, however, new suit property is sought to be added by amendment of plaint. Consequently, judgment in the case of *Satguru Sri Jajit Singh Ji (supra)* is not applicable to the facts of the instant case. Learned Counsel for the petitioners has also relied on judgment of Hon'ble Supreme Court in the case of *Surender Kumar Sharma v. Makhan Singh* reported as 2009 (4) CCC 599 (S. C.) to contend that amendment of plaint cannot be refused merely on the ground of delay. However, perusal of the aforesaid judgment does not reveal as to what type of amendment was sought in the said case.

6. Now, coming to the facts of the case in hand, the suit was instituted in the year 1998, whereas the amendment application was moved in the year 2009, when the suit was at the stage of final arguments. Addition of new property at the final stage after delay of more than a decade, would, by itself, cause serious prejudice and injustice to the defendants. The contention of the learned Counsel for the petitioners that the petitioners would not lead any oral evidence and would lead only documentary evidence, which is also already on the record, is also of no help because the same cannot be said about the defendants. Obviously, after addition of new property, the defendants would have a right to lead further evidence. The proposed amendment would start a *de novo* trial. Moreover, if the plaintiffs have a right to seek any relief regarding the land of Village Kaleke in the instant suit, the plaintiffs would also have a right to do so by filing separate suit, if permissible under the law. If proposed amendment is allowed at this stage, the question of limitation may also arise.

7. For the reasons recorded herein above, I find that proposed amendment of plaint cannot be allowed at this stage as it would cause serious prejudice and injustice to the defendants, who cannot be compensated by way of cost. The revision petition is accordingly dismissed.