

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-455-2025 (O&M)****Reserved on: 19.05.2025****Date of pronouncement: 01.07.2025****Naresh Kumar & Another****...Petitioner(s)****Vs.****Devinder Singh & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Argued by:- Mr. Rakesh Chopra, Advocate with
Mr. Jashan Chopra, Advocate
for the petitioners.

Mr. Nikhil Chopra, Advocate
for the respondents.

NIDHI GUPTA, J.

Present revision petition under Article 227 of the Constitution of India has been filed by the plaintiffs for setting aside the impugned order dated 08.01.2025 (Annexure P6) passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib vide which the application filed by the petitioners/plaintiffs under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint, has been dismissed.

2. Mr. Nikhil Chopra, Advocate puts in appearance on behalf of the respondent/defendants and files Vakalatnama, which is taken on record.

3. Brief facts of the case are that the petitioners filed Civil Suit dated 25.09.2019 (Annexure P1) seeking specific performance of



Agreement to Sell dated 04.12.2015 for suit land measuring 25 kanals. It was averred that the suit land was sold by the respondents to the petitioners for total sale consideration of Rs.77,81,250/- all of which was paid by the petitioners to the respondents. Despite that, possession of the suit land stayed with the respondents. Even no target date was set for execution of the sale deed. Alternate prayer in the suit was for recovery of sale consideration along with interest; and other allied reliefs.

4. The suit was resisted by the respondents by filing written statement dated 16.12.2020 (Annexure P2); to which replication dated 21.09.2021 (Annexure P3) was filed by the petitioners.

5. Subsequently, the petitioners filed present application dated 29.8.2024 (Annexure P4) under Order 6 Rule 17 CPC for amendment of the plaint to the following effect: –

“2. That while filling the suit, the plaintiffs Naresh Kumar and Ved Prakash could not inform their counsel about one fact, which took place in the house of defendant no. 1 Devinder Singh. In fact, on 03-03-2019 the father of the plaintiff Mr Sunder Lal S/o Uttam Chand visited the house of the defendant no. 1 Devinder Singh along with his son Ved Prakash, his grandsons Rajan Gakhar and Rahul kumar, Wajir Singh (deceased) S/ o Ajit Singh for amicable settlement before filling the suit. The matter of execution of registration of sale deed was discussed there, where the defendant no. 1 Devinder Singh admitted that he will execute and register the sale deed of 3 Acre land in favour of plaintiffs. This discussion was recorded in the mobile of the son of the plaintiff no. 1 Rajan Gakhar. The plaintiffs want to bring on record said visit



and outcome of the meeting dated 03-03-2019, which took place between above said persons. So, the plaintiffs want to add another paragraph in the plaint as para no. 12-A. On 03-03-2019, the father of the plaintiff Sunder Lal S/o Uttam Chand visited the house of the defendant Devinder Singh along with his son Ved Prakash, his grandsons Rajan Gakhar and Rahul kumar, Wazir Singh(deceased) S/o Ajit Singh discussed the matter at length for amicable settlement before filling the suit. In said meeting, the defendant no.1 Devinder Singh admitted that he will execute and register the sale deed of 3 Acre land in favour of plaintiffs soon and he also admitted that the plaintiff Naresh Kumar were never at fault rather he helped him whenever he needed. Whole of the instance was recorded in the mobile of the son of the plaintiff no. 1 Rajan Gakhar as three video clips.”

6. This application was resisted by the respondents by filing reply dated 10.10.2024 (Annexure P5). Vide the impugned order dated 08.01.2025 (Annexure P6), application of the petitioners has been dismissed.

7. It is inter alia submitted by learned counsel for the petitioners that the impugned order is unsustainable for not assigning any reasons for rejecting the prayer of the petitioners for amendment of plaint. Ld. Counsel contends that in passing the impugned order, the learned trial court lost sight of the fact that although the respondent in his written statement has denied specific performance of the Agreement in question, however, in the proposed evidence/video recordings in the



possession of the petitioners, the respondent has admitted the said Agreement to Sell dated 04.12.2015. In the written statement, the respondents have also not denied that full amount of about Rs.78 lakh has been received by them. Since entire sale consideration was paid, the sale was to be executed by the respondents/defendants in favour of petitioners/plaintiffs on demand made by them. On 13.08.2019, the plaintiffs requested the defendants for execution of Sale Deed, but they refused. Hence suit for specific performance was filed on 25.09.2019. Ld. Counsel contends that as such, it is imperative to bring the said conversation between the parties on record for the proper adjudication of the matter.

8. Ld. Counsel argues that it is only to substantiate the very facts pleaded in the plaint, that the petitioners had filed the present application. It is candidly admitted that the said facts did not find mention in the plaint due to 'inadvertence' on part of the plaintiffs. However, it is argued that no new relief is sought by the petitioners, and there is no mala fide intent behind the inadvertent omission. Even no prejudice will be caused to the respondents as, when application for amendment of plaint was filed, evidence of the plaintiffs was going on. The plaintiffs' evidence has not been closed on account of non-cross-examination of PWs by defendants. Various times PWs were present but defendants did not cross-examine them. The learned trial court was constrained to pass orders either granting last opportunity to the defendants for cross-



examination of PWs or imposing costs upon defendants. Thus, Application of the petitioners is not barred by limitation as the petitioners' cross-examination is yet to happen. Even the certificate as amended under Section 65-B of the Indian Evidence Act has been given by the petitioner along with his application. It is submitted that on the other hand if the present petition is not allowed, grave prejudice and loss will be caused to the petitioners.

9. It is lastly contended that Proviso to Order 6 Rule 17 CPC does not bar the amendment if it is necessary for determining the actual and real controversy and nature of controversy is not changed. In support of his contentions, learned counsel relies upon judgments of this Court in **Sumeer Jassal Vs. Smt. Pushpa Rani & Others Law Finder Doc ID # 384840; Dalip Singh & Others Vs. Rattan Lal & Others Law Finder Doc ID # 2531572; M/s Vishesh Kumar Contractors & Others Vs. Surmukh Singh & Others Law Finder Doc ID # 2649807**, in all of which it is broadly held that amendment is to be permitted even after commencement of trial, if the same is necessary to avoid multiplicity of litigation and does not cause prejudice to the defendant.

10. Learned counsel further relies upon judgment of the Hon'ble Supreme Court in **"Abdul Rehman & Another Vs. Mohd. Ruldu & Others"** Law Finder Doc ID # 393861, wherein it is held that: -

"10. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended



plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.”

11. Ld. Counsel for the petitioners accordingly prays that in view of law and facts, the amendment may please be allowed as same is related to the controversy involved in the suit and hence is necessary to be determined for all times to come. Moreover, there is neither change in cause of action nor in nature of suit. Evidence of plaintiff is going on and plaintiff is yet to be cross-examined. No prejudice would be caused to the



defendants as he will get an opportunity to file written statement and cross-examine the witnesses of plaintiff (as only formal PW Yadwinder Singh has been cross-examined). The merits of the amendment are not to be seen/touched at the time of deciding the amendment. The petitioner could have mentioned about the video recording in his evidence if there was foundation of said video recording in the pleading. Due to this very fact amendment is being sought and no delay is going to occur. The amendment is absolutely related to agreement to sell and suit property and is between the same parties. The petitioner has already placed on record certificate under Section 65-B of Evidence Act in trial Court in support of the said video recording/pen drive, which is also on the record. In order to settle the controversy technicalities should not be allowed to come in way. It is accordingly prayed that the present revision petition be allowed and the impugned order be set aside.

12. Per contra, learned counsel for the respondents vehemently opposes the prayer made on behalf of the petitioners and submits that it is the own pleading of the petitioners that the said alleged video recordings were not produced due to "stress". A bare reading of application (Annexure P4) reveals that admittedly the said evidence was not produced due to 'oversight'. Ld. counsel argues that as per Order 6 Rule 17 CPC, the same constitutes no ground to permit amendment of the plaint. It is stated that duty is cast on the plaintiff to exercise due diligence. However,



there is no plea regarding due diligence in the said application. As such, the impugned order suffers from no error.

13. It is further submitted that the suit was filed in September 2019; whereas the present application has been filed 5 years after commencement of trial. It is pointed out that as noticed in the impugned order, even at the time of filing his affidavit of evidence, the petitioner has made no reference whatsoever to this alleged recording. The respondent in his reply to the application (Annexure P5), has also mentioned that the petitioner has already availed more than 30 dates for leading evidence including number of last opportunities. It is contended that the present application has been filed only with the express purpose of delaying the proceedings.

14. Ld. Counsel further contends that by way of the proposed amendment, the petitioners are seeking to misrepresent the facts before the learned trial Court which will change the nature of the suit. It is submitted that the petitioners are now making a new claim beyond the prayer of specific performance. As such, argument of the petitioners that the said evidence is necessary for the proper adjudication of the matter, is liable to be rejected. It is lastly pointed out that the respondent is a poor farmer, whereas the petitioners are commission agents. It is accordingly prayed that the present application be dismissed. In support, ld. counsel relies upon judgment of this Court in **“Shabbu Vs. Nishan & Others” Law Finder Doc ID # 463043**; judgment of Calcutta High Court in **“Gautam**



Mukherjee & Others Vs. Abani Mohan Goswami” Law finder Doc ID # 2148494; judgment of Allahabad High Court in **“Shri Firoz Uddin & 4 Others Vs. Shri Anwar Uddin” Law Finder Doc ID # 2307414;** judgment of Patna High Court in **“Shree Narayan &Anr. Vs. Mahendra Prasad Yadav & Ors.” Law Finder Doc ID # 625387;** and judgment of Himachal Pradesh High Court in **“Anil Kumar Vs. Shri Tara Dutt Sharma” Law Finder Doc ID # 1594538.**

15. No other argument is raised on behalf of the parties.

16. I have heard ld. counsel for the parties and perused the case file in detail. After giving my thoughtful consideration to the rival submissions made on behalf of both the parties, I find no merit in the submissions advanced on behalf of the petitioners for the reasons recorded hereinbelow.

17. Order 6 Rule 17 CPC reads 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.”

18. A bare reading of the above provision shows that amendment is to be permitted in justiciable terms for the determination of the real question/controversy at hand. However, the said provision cannot be read in isolation of the proviso thereto, which further



categorically stipulates that “...no application for amendment shall be allowed after the trial is 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.” Thus, prior to permitting amendment, it is incumbent upon this Court to veritably conclude that despite exercise of due diligence, the party seeking the amendment could not have pleaded the facts now sought to be incorporated.

19. In the peculiar facts of this case, this Court is unable to bring itself to the conclusion required as per law/ stipulated in the proviso. The undisputed facts of the present case in chronological sequence are that the Civil Suit (Annexure P1) was filed by the petitioners on 25.09.2019; reply thereto was filed by the respondents on 16.12.2020 (Annexure P2); replication was filed by the petitioner on 21.09.2021 (Annexure P3); issues were framed on 28.10.2021; whereafter trial had commenced. As per the petitioners themselves, the alleged recordings are of 3.3.2019 i.e. the said evidence was admittedly in possession of the petitioners even prior to filing of the suit. Yet, the same find no mention in the plaint. Even in the affidavit in evidence filed by the petitioners before the learned trial Court as far back as on 29.08.2023, no mention whatsoever was made of the video clips dated 3.3.2019. It is only now that the said video clips are sought to be incorporated by way of application for amendment dated 29.08.2024 (Annexure P4). It is



therefore crystal clear that the petitioners have execrably failed to exercise due diligence as required under law.

20. It is to be noted that the application for amendment dated 29.08.2024 (Annexure P4) filed by the petitioners, gives no reasons whatsoever for not mentioning the alleged recordings in the plaint, or in the affidavit of evidence. In fact, the application for amendment shows that there is no plea regarding due diligence. On the contrary, it has been candidly admitted by the petitioners/applicants that while filing the suit, the plaintiffs "*could not inform their counsel*"; and that "*this incidence has just come to the mind of the plaintiff*"; and that "*this incidence could not be mentioned in the plaint earlier due to stress over the plaintiff.....*". It has been admitted by counsel for the petitioners that the facts of the proposed amendment were not included in the plaint due to 'oversight'. Needless to say, the above said reasons cited by the petitioners constitute no ground for permitting amendment. As per established tenets of law, inadvertence, oversight, or sheer carelessness as in the present case, constitute no ground for permitting amendment. By way of amendment, the petitioners cannot be permitted to fill the lacunae in their case. Provision of Order 6 Rule 17 CPC is not to fill lacuna in the pleadings.

21. It is undisputed that the only situation in which amendment after commencement of trial is envisaged is if '*in spite of due diligence, the party could not have raised the matter before commencement of trial.*' In dealing with cases of such nature, there is



necessity to delicately traverse the fine line between strict interpretation of the provision and proper adjudication of the matter and equitable construction of provision. In the present case it cannot be ignored that even though the said evidence was in the possession of the petitioners, and is stated to be of utmost importance, yet it has not been mentioned either in the plaint or in the affidavit filed by the petitioners; merely due to 'oversight'. It is my considered view, that in such a situation, amendment cannot be permitted.

22. Moreover, it cannot be ignored that the present application under Order 6 Rule 17 CPC for amendment has been filed by the petitioners much after trial had commenced – which, in itself is not permitted as per law. Admittedly, plaintiff witnesses have been examined, plaintiff evidence is almost at its conclusion, and cross-examination has also been conducted by the defendants. A perusal of the zimni orders (Annexure P-7) shows that if not 30, the petitioner has availed sufficient number of dates to lead his evidence. Furthermore, permitting the said amendment would change the nature of the suit. Therefore, it would be grossly prejudicial and inequitable to the respondents if amendment is permitted at this belated stage.

23. This Court is well aware of the precedent case law holding that in applications of such nature a liberal view ought to be taken. However, keeping in view the entirety of the above noted facts and circumstances of the case, this Court is not convinced to grant the prayer



of the petitioners. I am supported in my view by recent judgment dated 29.2.2024, of the Hon'ble Supreme Court in **Basavaraj v. Indira (SC) : Law Finder Doc Id # 2510571** wherein it is 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.”

24. Reference may also be made to another judgment of the Hon'ble Supreme Court in **Pandit Malhari Mahale v. Monika Pandit Mahale, (SC) : Law Finder Doc Id # 1691426** wherein it is 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.”

25. This Court in **Rati Ram v. Inder (P&H) : Law Finder Doc Id # 244372** has held as under:-

“Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of Pleadings - Amendment cannot be allowed as a matter of right -Amendment was not at all necessary to determine the real controversy between the parties - The application was not bona fide as such, it was only filed to delay the proceeding further when the suit remained pending for seven years - Amendment right decline.”

26. Again 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.”

27. The judgments relied upon by learned counsel for the petitioners are distinguishable on facts and law. In view of the above, the present petition is **dismissed**.

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

01.07.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No