

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).1 0 3 7 0 / 2 0 0 7

(From the judgement and order dated 0 8 / 0 2 / 2 0 0 7 in CR No. 7 1 6 / 2 0 0 7 of The  
HIGH C O U R T O F P U N J A B & H A R Y A N A AT C H A N D I G A R H )

R A M K I S H A N

Petitioner(s)

V E R S U S

R A M K A R A N & O R S.

Respondent(s)

(With prayer for interim relief )

Date: 0 4 / 0 4 / 2 0 0 8 This Petition was called on for hearing today.

C O R A M :

H O N ' B L E M R . J U S T I C E S . B . S I N H A

H O N ' B L E M R . J U S T I C E L O K E S H W A R S I N G H P A N T A

For Petitioner(s) Mr. S.K. Ban s al, Adv.

Mrs. Savitri Ban s al, Adv.

Mr. Roopak Ban s al, Adv.

Dr. K ail a s h Chand, Adv.

For Respondent(s)

Mr. K. K . Mohan, Adv.

Mr. Goodwill Indeevar , Adv

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The matter is remitted to the trial Court for consideration thereof afresh  
and the appeal is allowed in terms of the signed order.

(Asha Kuk rety)

Sr. P . A .

(The signed order is placed on the file)

(Push ap Lata Bhardwaj)

Court Master

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I N T H E S U P R E M E C O U R T O F I N D I A

C I V I L A P P E L L A T E J U R I S D I C T I O N

C I V I L A P E A L N O . 2 5 6 9 O F 2 0 0 8

(A R I S I N G O U T O F S L P ( C ) N O . 1 0 3 7 0 / 0 7 )

R A M K I S H A N

Appellant (s)

V E R S U S

R A M K A R A N & O R S.

Respondent (s)

O R D E R

Delay condoned.

Leave granted.

The defendant before the trial Court is the appellant before us. Admittedly,  
the plaintiff/respondent filed a suit on 0 8 . 0 1 . 2 0 0 2 . After filing of the writt  
en  
statement by the petitioner, issues were framed. On 1 0 . 0 4 . 2 0 0 2 the case was fixed  
for evidence on 2 2 . 0 5 . 2 0 0 2 . Only thereafter, an application for amendment in  
terms of order VI Rule 1 7 was filed. By reason of an order dated 1 8 . 0 4 . 2 0 0 6 , the

said application for amendment was allowed by the learned trial Court stating:

"6. Vide proposed amendments plaintiffs merely want to include specific khasr a numbers in the description of the suit land and want to take plea that at the time of oral exchange possession of specific khasr a numbers was given to J agir Singh and plaintiffs having purchased the share of Jagir Singh from his widow Sha kuntal a Devi, are in possession of specific khasr a numbers. The defendants have opposed the proposed amendments on the ground that since there was no exchange of land between them and J agir Singh, question of delivering possession of specific khasr a numbers does not arise and since land of defendants allegedly exchanged by Jagir Singh was a part of larger piece of land, question of delivering possession of specific khasr a numbers does not arise.

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7. At this stage, the Court is not to go into the merits of the proposed amendments nor it is to examine the question as to whether a specific khasr a number could be/had been delivered to Jagir Singh by defendants at the time of oral exchange. The Court cannot loose sight of the fact that factum of oral exchange is totally denied by the defendant and these are, therefore, questions of facts which can only be decided after perusal of entire evidence led by the parties. At this stage, the court is merely to examine the question as to whether the proposed amendment is necessa ry for just decision of real controversy, it will help in avoiding multiplicity of litigation and is legally permissible."

The High Court, by reason of the impugned judgment, has dismissed the revision application filed by the appellant herein. The short question which arises for our consideration is as to whether the application for amendment of plaint was maintain able having regard to the proviso appended to Order VI Rule 1 7 of Code of Civil P rocedure (Amendment Act, 9 9). Order VI Rule 1 7 of the Code reads thus:

"1 7 . 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 necessa ry 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."

Although the jurisdiction of the Court in the matter of amendment of plaint is wide, it is sought to be curtailed by the Legislature in terms of the proviso appended to order VI Rule 1 7 of the C.P.C. In the event, the learned trial Judge was inclined to allow the application for amendment, it was required to arrive at the conclusion that in spite of due diligence on the part of the plaintiff, he could not have raised the matter before commencement of trial. As noticed, no such

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finding has been arrived at by the trial or by the High Court. The statutory requirements for exercising the jurisdiction by the trial Court for amendment of the plaint, thus, has not been complied with. We are, therefore, of the opinion that the impugned judgment cannot be sustained. It is accordingly set aside. The matter is remitted to the

trial court for consideration of the matter afresh. It would be open to the parties herein to file additional affidavits.

The appeal is allowed.

.....J  
(S.B. SINH A)

.....J  
(LOK E S H W A R

SIN G H

P A N T A)  
N E W D E L H I  
A P R I L 0 4, 2 0 0 8