

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.1295 of 2015

Date of decision: 05.11.2015

Balbir Singh and others

.....Petitioners

versus

Maha Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sarvjit Singh Khurana, Advocate for the petitioners
Mr.Nipun Vashist, , Advocate for respondent No.1

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 19.12.2014, passed by learned Additional Civil Judge, Senior Division, Rewari, vide which, application for amendment of the written statement by defendant No.1 Maha Singh under Order 6 Rule 17 CPC was allowed.

It comes out that a suit for possession by way of partition was filed by the plaintiffs – Jagmal Singh, Jagdish, Janwant Singh sons of Surjan Singh (respondent Nos.20 to 22 herein).

The perusal of the plaint shows that the plaintiffs had claimed that they are co-owners in possession of land bearing khasra No.685(1-0) gair mumkin. It was further alleged that defendant Nos.20 to 22 i.e. Balbir Singh etc. had taken the Southern

side of said khasra no. and constructed their pucca houses according to their half share, which has been shown in the site plan with letters 'CDEF' and is in exclusive possession of defendant Nos.20 to 22. It was further pleaded that dispute is regarding the Northern portion regarding which partition is sought. Defendant No.1 in the written statement has pleaded the oral family settlement, under which Southern portion was given to defendant Nos.20 to 22, which is the one half share of the total area. By way of amendment application, which was filed before the commencement of the trial, the defendants want to plead that now on engaging a new counsel, they have come to know regarding the said oral family settlement by way of written statement, whereas there was no oral family settlement. They also want to bring on record some entries made in the revenue record.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of the pleadings shows that the amendment application was filed before the commencement of the trial. The plea of the learned counsel for the petitioners who are defendant Nos.20 to 22 before the lower Court and were not contesting the suit, is that by way of amendment defendant No.1 wants to withdraw his admission regarding oral family settlement and also wants to plead regarding the record which amounts to counter claim. However, it is not denied that no formal counter claim was made in the written statement of defendant No.1. Plaintiffs claim that Southern portion was given to defendant Nos.20 to 22, whether it is on basis of oral

family settlement or otherwise, the fact is that the plaintiffs admit that Southern portion is with defendant Nos.20 to 22 present petitioners and the partition is sought only with regard to the Northern portion.

Lower Court considering all the facts and circumstances, allowed the application. This Court has been informed that now both the parties have concluded their evidence and case is mature for decision.

In such circumstances, I am of the view that when the plaintiffs admit the possession of defendant Nos.20 to 22, it is immaterial whether it is oral partition or not. Therefore, amendment will not change the nature of the suit neither any admission is sought to be withdrawn. However, the facts mentioned in the un-amended written statement can always be pleaded at the time of arguments by either party to support their case and oppose the case of other party.

The revision is accordingly dismissed.

05.11.2015

gk

**(Kuldip Singh)
Judge**