

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1532 of 2014
Date of decision : October 15, 2015

Amar Singh

..... Petitioner

Versus

Kehru and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anil Kshetarpal, Senior Advocate with
Mr. I. S. Pabla, Advocate
for the petitioner.

Mr. Pritam Saini, Advocate
for the respondents.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 21.2.2014 whereby an application filed by the respondents-defendants seeking amendment in the written statement has been allowed.

Mr. Anil Kshetarpal, Senior Advocate assisted by Mr. I. S. Pabla, Advocate submits that the order allowing the application seeking amendment of the written statement is erroneous and perverse because there is no reference of expression “despite exercise of due diligence”. The amendment which is sought to be incorporated would alter the stand taken in originally filed written

statement.

He further submits that the petitioner-plaintiff concluded the evidence on 23.1.2014 and the documents referred to in paragraph 3 of the plaint were filed on 12.8.2013 whereas the application for amendment has been filed on 13.2.2014 when it was a second date for leading the defendant's evidence, thus, the application is not sustainable and the impugned order is liable to be set aside.

Mr. Pritam Saini, learned counsel appearing on behalf of the respondents-defendants submits, that as per the averments made in paragraph 3 of the plaint, the plaintiff relied upon the judgment and decree by mentioning that the copy of the judgment and decree of said suit are in possession of defendant Nos. 1 to 3 and 8. Before the defendants could file the written statement, an application was moved to produce the aforementioned documents. The trial court vide order dated 6.9.2012 directed the petitioner to produce the documents otherwise adverse inference would be drawn. The said documents were tendered on 12.8.2013 and accordingly when stage reached for defendant's evidence, an application for amendment was filed.

He further submits that in paragraph 3 of the written statement, a specific plea has been made that as and when the documents would be supplied, a right to seek amendment in the written statement was reserved, thus, submits that there is no illegality and perversity in the impugned order and the revision petition is liable to be dismissed.

I have heard learned counsel for the parties and appraised the paper book.

No doubt that the application seeking amendment of the written statement lacks the requirement of law i.e. use of expression “despite exercise of due diligence” but the fact remains that the defendant by filing the written statement categorically stated in paragraph 3 that they reserve right to file amended written statement. Paragraph 3 reads thus:-

“That para no.3 of the plaint, as stated, is wrong and denied and not admitted to be correct. The judgment and decree mentioned in this para of the plaint has not been placed on file inspite of specific application given in the court and the answering defendants reserve their right to file amended written statement as and when the copies of the alleged judgment and decree will be supplied to them. The plaintiff is not entitled to physical possession as alleged.”

The amendment sought to be incorporated by way of preliminary objections reads thus:-

“The plaintiff and defendant No.9 entered into a compromise/agreement with defendant No.1 Kehru Ram and received a sum of Rs.4500/- from the defendant No.1 in lieu of relinquishing all their rights in the suit land and also received a sum of Rs.9000/- from Hari Ram (since deceased) son of

Badhawa, Rs.5500/- from Deshu and Rs.4500/- from Hansu son of Badhawa for relinquishing all their rights in the suit land. They also sworn their separate affidavits duly attested by Notary Public admitting the terms of the compromise/agreement and the plaintiff and defendant no.9 were left with no concern, right, title or interest in the suit property.”

On perusal of the purported amendment it is revealed that it would not alter the stand taken in the written statement, rather it is elaborative/clarificatory in nature.

I am of the view, that no prejudice would be caused to the petitioner, in case such amendment is allowed, as he would have right to cross-examine the defendant as well as witnesses viz-a-viz aforementioned amendment.

The order impugned does not suffer from any illegality and perversity as the same cannot be said to have been passed without jurisdiction. Accordingly, the order impugned is hereby upheld.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

October 15 , 2015
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