

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 2125 of 2015 (O&M)
Date of decision: 11.5.2015

Rajeev @ Radhe Shyam and others

.. Petitioners

v.

Chander Parkash

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sumit Gupta, Advocate for the petitioners.
Mr. S. S. Goripuria, Advocate for the respondent.

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Rajesh Bindal J.

The defendants have challenged the order dated 3.3.2015, passed by the learned court below, whereby the application filed by them for amendment of the written statement was dismissed.

The suit was filed by the respondent-plaintiff on 3.6.2014 for permanent and mandatory injunction pertaining to the suit property, which is ancestral and jointly owned by the parties, being descendants of a common ancestor.

Learned counsel for the petitioners submitted that there was an inadvertent error in the written statement filed, where instead of “legal heirs”, “illegal heirs” was mentioned. He further submitted that the second amendment sought is explanatory in nature in the sense that in the written statement already filed, specific areas in possession of different parties were mentioned, however, the same were not ear-marked, as no site plan was produced. The same is sought to be specified in the written statement and a site plan showing details thereof is sought to be produced. The amendment is merely explanatory as there is no change in the area already mentioned in

the written statement in possession of different parties. When the application was filed, the suit was at the initial stage as even the issues had not been framed. The suit itself was filed on 3.6.2014. However, now the issues have been framed and the respondent-plaintiff has led some evidence. The amendment will not change the nature of the suit. No prejudice as such is going to be caused to the other side as no admissions are sought to be withdrawn.

On the other hand, learned counsel for the respondent-plaintiff, while fairly not objecting to the prayer for amendment of the words “illegal heirs” to “legal heirs”, submitted that no reason has been assigned by the petitioners for seeking amendment of the written statement and why the plea, which is sought to be raised now, was not raised when the written statement was filed initially. The object is only to delay the proceedings. It is an after-thought.

Heard learned counsel for the parties and perused the paper book.

The suit was filed on 3.6.2014. The application for amendment of the written statement was filed without any delay before even the issues were framed. The prayer was two-fold, namely, correction of a typographical error mentioning “illegal heirs” instead of “legal heirs”. To this amendment, even learned counsel for the respondent had no objection.

As far as second amendment sought by the petitioners is concerned, in the written statement originally filed, in para No. 2, it was stated that heirs of Satya Narain including the respondent-plaintiff are in possession of about 140 square yards whereas the petitioners are in possession of a house measuring about 85 square yards and heirs of Shiv Narain are in possession of area measuring about 90 square yards. It was also stated that the respondent-plaintiff is enjoying possession of larger portion of the ancestral property than the petitioners-defendants. The only amendment sought to be made is by providing explanation to the aforesaid areas in possession of different parties by annexing a site plan ear-marking spaces therein to be more specific as the property in dispute is a residential house, different parts of which are in possession of different parties. The

amendment will not change the nature of the suit or the relief claimed. It does not even amount to withdrawal of any admission or change of stand already taken. The application having been filed at the initial stage, when even issues had not been framed, in my opinion, rejection of the prayer for amendment of the written statement made by the petitioners by the court below was not appropriate. The application deserves to be allowed. Ordered accordingly. The impugned order passed by the court below is set aside. The amended written statement, if not already filed by the petitioners-defendants in the court below, be filed now.

The petition stands disposed of.

(Rajesh Bindal)
Judge

11.5.2015
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