

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2264 of 2015

Date of Decision.01.04.2015

Amarjit Singh and another

.....Petitioners

Versus

Lal Singh and others

.....Respondents

Present: Mr. HPS Ghuman, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The petition for amendment is filed by the defendant after plaintiff's side is closed to take an additional plea that even apart from the proprietary right which the defendant had over the suit property which he claimed as having obtained by him in oral exchange, there was a passage in a portion of the property through which alone he can access his own other property. This plea was brought when it was the turn of the defendant to give his evidence and the Court rejected it on the ground that the plea was inconsistent with the contentions already taken.

2. Though I will not support the reasoning that inconsistency in the statement will be taken as ground for rejection, I will find that the defendant has a privilege to take even inconsistent pleas and that ought not to have been taken as ground for rejection. But however I find that a case that the property was comprised of a passage through which he

had right of access ought to have been a case which must have been confronted to the plaintiff at the time when the plaintiff was examined. The case in defence taken come by means of amendment after the side is closed. The provisions of Order 6 Rule 17 fetter the right of a party to amend after trial has commenced, except on the situations where in spite of exercise of due diligence the particular fact was not known and therefore, it could not have been taken before trial. There is no particular reason given as to why this statement was not brought earlier except a general statement that the party was illiterate. It is commonplace that a party who is illiterate takes the assistance of counsel to have pleadings drafted and the party cannot allow his/her own illiteracy as ground for not making this pleading before the Court. The aspect of illiteracy has nothing to do with a statement of fact saying whether there exists an exchange or not. Illiteracy will have a bearing only to averments or recitals in particular document which he could not have read. The fact what the petitioner now pleads is not an issue of any recital in any document that he was not aware of. On the other hand it is a circumstance of manner of enjoyment of property which the petitioner seeks to introduce which even an illiterate person could have very well known.

3. I do not think that there is any scope for intervention. The revision petition is dismissed although for different reasons.

(K.KANNAN)
JUDGE

April 01, 2015
Pankaj*