

**105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.3498 of 2015 (O&M)
Date of Decision: August 11, 2015**

Dilbagh Singh

.... Petitioner

vs.

Avtar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vijay Lath, Advocate for the petitioner.

Mr. H.S. Saini, Advocate for respondent Nos.1 to 3.

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)

Challenged in the present revision petition is the order dated 20.04.2015 passed by learned Civil Judge (Jr. Divn.), Sahibzada Ajit Singh Nagar (Mohali), vide which his application for amendment of the written statement filed by petitioner-defendant No.1 was dismissed.

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

It comes out that the plaintiff had filed suit for separate possession of 1/4th share each in the two properties mentioned in the head note of the plaint. The defendant had taken the objection that the suit is barred under Order 2 Rule 2 CPC because in the whole of

the claim the plaintiff is not included. When the case was at the final end and fixed for rebuttal and arguments and was going to be concluded, the defence has come with the present application seeking amendment, which are reproduced as under:

“a. That Para No.1 of the preliminary objection run as under, That the defendant No.1 at the time of separation from the brother in his share the Abadi house fell to his share was/is as under. East House of Avtar Singh, West House of Balbir Singh, South house of Bilbir Singh, North passage about 13 (Khan). Defendant No.1 about 8 years before transferred his share ancestral house which fell to his share with Balbir Singh which he took at the time of separation which is part of ancestral house. In transfer Balbir Singh gave his Abadi plot to defendant No.1 which is bounded as East Sajan Singh, Inder Singh, West Gali, South plot of Balbir Singh, north vacant plot of defendant. Balbir Singh also paid Rs.1,50,000/- to defendant No.1 as compensation of construction. After transfer, the defendant No.1 constructed his residential house consisting of 6 rooms, Kitchen, four cattle shed and guest room. The defendant No.1 also constructed boundary wall and fixed gate. The defendant No.1 also obtained electric meter in his name. The house which Balbir Singh took in transfer from defendant No.1 is residing with his family. An agreement was executed both the parties on 10.06.2013 photocopy of the agreement is hereby attached. The house shown as A in the head note of the plaint is in possession of Balbir Singh where he has residing with his family which he took in transfer from defendant No.1 which was the house of defendant No.1 which fell to

defendant No.1 at the time of separation of the brothers. The Plaintiffs have not concern in property No.A. The property shown as B in the present suit is the property which fell in the share of defendant No.1 in transferred after transfer the defendant No.1 constructed his residential house and is residing with his family the plaintiffs and defendant No.2 has no concern with property shown as B in the present suit. The plaintiff concealed the true facts from this Court so the suit of the plaintiffs is liable to be dismissed with cost.”

b. That Para No.1(a) of the preliminary objection runs as under:-

The defendant No.1 is having four brothers namely Jarnail Singh, Avtar Singh, Karnail Singh and Nagar Singh. All the brothers are having ancestral Abadi as well as landed property in village Gige Majra. The house bounded as East house of Randhir Singh, West Gali, South House of Dilbag Singh north house of Subhash Chand, house of Bhadar Singh, House of Dalwinder Singh and Jarnail Singh and house of Bahadar Singh this bigger house fell in share of Avtar Singh plaintiff Naagar Singh and Karnail Singh. Naagar Singh sold his share to Avtar Singh and shifted to Village Banur from 1995 and constructed his residential house where his family are also residing in that house. Naagar Singh is doing job in Railway Department and posted at Rajpura. The plaintiffs had not mentioned this property and the present suit. On this ground the present suit is liable to be dismissed because the house which is in possession of plaintiff Avtar Singh and Karnail Singh is ancestral house.

c. That Para No.1(b) of the preliminary objection run

as under:-

The Plaintiffs in the present suit has not be mentioned the Abadi plots bounded as Plot as Ruri bounded as:- North plot of Angrej Singh and Nanak Singh, South Ruri of Balbir Singh and Dilbag Singh sons of Harjal Singh East Ruri of Bhadar Singh, West Gali. Abadi plot Guhara bounded as north Pathwara of Amrik Singh south Pathwara of pundits East passage West Pond. The plaintiffs had not mentioned this ancestral joint properties in the present suit so the present suit is also liable to be dismissed with cost.

d. That Para No.2 of the written statement shall run as under:-

The ancestral big house was partitioned at the time of separation in big house Avtar Singh, Naagar Singh, Karnail Singh, father and mother were residing. One part of partition when defendant No.1 separated given to him which he further transferred with Balbir Singh where the family of Balbir Singh are residing. The defendant No.1 constructed his house in the plot which comes in transfer from Balbir Singh. The plaintiff Naagar Singh from the big ancestral house sold his share to Avtar Singh. The House which is in possession of plaintiff Avtar Singh and Karnail Singh is as under:-

The house bounded as East house of Randhir Singh, West Gali, South House of Dilbag Singh north house of Subhash Chand, house of Bhadar Singh, House of Dalwinder Singh and Jarnail Singh and house of Bahadar Singh. Sh. Hazara Singh purchased an Abadi plot from Nika Singh that Abadi plot was given to defendant No.2 where he constructed his residential house and residing with his family. The other two

Abadi plots i.e. Ruri plot and Pathwara plot as mentioned in the preliminary objection the plaintiffs had not mentioned in their plaint. The house shown as A is in possession of Balbir Singh where he is residing with his family and is absolute owner of house shown as A in the plaint. The house shown as B is in possession of defendant No.1 where after transfer he constructed his residential house and is absolute owner. The plaintiffs and defendant No.2 have no right in the properties mentioned in the head note of the plaint and have no right to partition the same.”

Learned Civil Judge has come to the conclusion that the facts mentioned in the application were within the knowledge of the defendant before the commencement of the trial and further that the amendment if allowed, they will completely change the essential nature of the suit and would in turn amount to complete reopening of the case.

Learned counsel for the petitioner has argued that no further evidence is to be led. By way of amendment, he wants to give the details of some other ancestral property, which has not been mentioned in the suit.

I am of the view that the objection has already been taken in the written statement that the suit is barred under Order 2, Rule 2 CPC. Therefore, the same will be considered on the basis of the evidence already available. The detailed amendment is sought in which some facts are given, which are required the plaintiff to lead rebuttal evidence. It amounts to reopening of the case.

The facts mentioned in the application were within the knowledge of the defendant when the written statement was filed. The case cannot be allowed to be reopened at the stage when it is going to be concluded.

Learned counsel for the petitioner has relied upon the authorities of this Court in cases of ***“Anita Dahiya (wrongly mentioned) @ Anita Rani @ Anita Gar vs Sohan Singh and others”, 2010(3) Law Herald 1899, Bhawanjit Singh and others vs Jaswinderjit Singh Bhuller and others”, 2009(5) R.C.R.(Civil) 100 and “Sadhu Singh vs Balvir Kaur and ors.”, 2014(9) R.C.R. (Civil) 2989.***

I am of the view that the facts of the each case are different.

In the present case, the necessary objection has been taken and the evidence regarding partial partition has been led, which can be considered at the stage of arguments.

Therefore, there is no ground to interfere in the impugned order.

Consequently, the present revision petition stands dismissed.

August 11, 2015
sarita

(KULDIP SINGH)
JUDGE