

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

CR No.4367 of 2014 (O&M)
Date of Decision: 05.01.2015

Ishro Devi and others

. . . .Petitioners

Versus

Smt. Sukma and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Lokesh Sinhal, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J.

The petitioners have challenged the order dated 9.5.2014, dismissing their application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 [for short 'the CPC] for amendment in the written statement.

The plaintiff filed the suit for declaration that she is owner in joint possession of 1/2 share of the suit land measuring 52 kanals 11 marlas situated within the revenue estate of Village Aurang Shahpur, Tehsil Hansi now Tehsil Narnaund, District Hisar.

In brief, one Sheo Dutt had two children, namely, Basheshar (son) and Prameshwari (daughter). Plaintiff is the daughter of Parmeshwari, whereas defendant No.1 (Nafe Singh) (since deceased) and defendant No.2 (Hawa Singh) are the sons of Basheshar. It is alleged that after the death of Sheo Dutt, both Basheshar and Prameshwari became the owners, to the extent of

1/2 share each of the suit property and entered into possession as well. According to the plaintiff, the suit land was being cultivated and managed by the family of Basheshar. She had requested the defendants in the month of July, 2007 to partition the suit land as she had lost faith in them but when they did not accept her request, she went to Halqa Patwari for obtaining the revenue records and came to know that entries in the revenue record have been changed on the basis of a mutation bearing No.919 dated 23.3.1984, without notice to her, on the basis of a civil court decree dated 6.4.1983 which has also been challenged in the suit on the ground that she had never appeared in the suit and neither engaged any counsel nor filed any written statement. She also challenged the entries in the revenue record showing defendants No.1 and 2 to be the owners of 1/2 share belonging to the plaintiff, as null and void. Defendants No.1 to 3 filed a joint written statement. In para No.14 thereof, it was averred that the plaintiff or her mother was never a co-sharer in the disputed land as Sheo Dutt had expired before the Hindu Succession Act, 1956 came into force, therefore, the estate of Sheo Dutt could not have been inherited by Prameshwari being a female and the mutation was wrongly entered by the revenue officials in the names of Basheshar and his sister Prameshwari to the extent of equal shares. It is also alleged that the plaintiff had herself suffered a decree on 6.4.1983 and mutation was sanctioned accordingly on 23.3.1984. On the pleadings of the parties, as many as 15 issues were framed. The parties led their documentary as well as oral evidence and the trial Court decided issues No.1 to 3 in favour of the plaintiff and issue No.14 against the defendants. Consequently the

suit was decreed on 22.4.2010 and the Civil Court decree dated 6.4.1983 and mutation No.919 dated 23.3.1984 were set aside and the plaintiff was declared owner in joint possession of 1/2 share of the suit land and was held entitled for correction of the revenue entry in her favour. The defendants were restrained from alienating the suit land pertaining to 1/2 share of the plaintiff, in any way or manner. The defendants challenged the judgment and decree of the trial Court by way of appeal and during its pendency, an application was filed through an advocate on 3.1.2014 for amendment of the written statement to add preliminary objection No.15 to allege that the property in dispute was ancestral at the time when Sheo Dutt had expired, therefore, Prameshwari, mother of the plaintiff, had no right, title or interest in it. This application has been dismissed by the Appellate Court, *inter alia*, on the ground that neither the application seeking amendment of the written statement is supported by an affidavit of the parties concerned nor the applicants/defendants could prove that they were not aware of the mutations prior to the first week of November 2013 because not only the mutation No.179 is of 11.12.1935 but also it has already been produced by the defendant as Ex.D4. The Appellate Court had also observed that the written statement was filed on 29.2.2008, the suit was decreed on 22.4.2010, the appeal was filed on 26.5.2010 and the application is filed on 3.1.2014 without giving any plausible explanation for such a long delay.

Learned counsel for the petitioners has submitted that if the property in dispute is proved to be ancestral in the hands of Sheo Dutt, who had died in the year 1954 before the enforcement of

the Hindu Succession Act, 1956, the mother of the plaintiff would not have succeeded to his property being a female and the entire property would have been inherited by his only son Basheshar. In order to prove that the property in dispute was ancestral, he had filed an application bearing CM No.27964-CII-2014 along with various jamabandis.

Learned counsel for the petitioners has argued that the prayer for amendment of the written statement has been rejected by the Court below only on the ground of delay. In this regard, he has relied upon a judgment of the Supreme Court in the case of **“Abdul Rehman and another Vs. Mohd. Ruldu and others”** 2012(4) RCR (Civil) 481, in which it has been held that the purpose of allowing the amendment is to minimize the litigation. It is submitted that though there is some delay in filing the application for amendment of the written statement but it would go to the root of the case and should have been allowed by the learned court below.

I have heard learned counsel for the petitioners and perused the record.

There is no dispute that the plaintiff has challenged the decree dated 6.4.1983 and consequent mutation No.919 dated 23.3.1984 by which she has been deprived of her right only to the extent of $\frac{1}{2}$ share in the property in dispute alleged to have devolved upon her after the death of her mother Prameshwari. The trial Court has ordered the correction of the revenue record in which defendants No.1 and 2 have been recorded as owners in respect of the $\frac{1}{2}$ share of property in dispute claimed by the plaintiff. Defendants No.1 to 3, who had filed joint written statement, had

categorically alleged that Sheo Dutt had expired before the Hindu Succession Act, 1956 came into force and therefore, the inheritance would not have gone to his daughter Prameshwari being a female as she was not a coparcener. Issue No.14 was specifically framed on the pleadings of the defendants, which they had miserably failed to prove before the trial Court as issue No.14 has decided against them. The petitioner is wrong to say that he was not aware of the mutation No.59 dated 17.2.1891 and mutation No.179 dated 11.12.1935 prior to the first week of November 2013 and therefore, despite due diligence, could not take the plea in the original written statement about the ancestral nature of the suit property though mutation No.179 dated 11.12.1935 has already been produced by the defendants as Ex.D4, therefore, the averment made in the application is found to be contrary to record. Moreover, there is no explanation given in the revision petition as to why the application is not supported by an affidavit of the defendants to contend that the property in dispute was ancestral in the hands of Sheo Dutt as the application is filed only through the advocate.

Be that as it may, the other question, which has remained unanswered, is about the delay in filing the application because the original written statement was filed on 29.2.2008 and the suit was decreed on 22.4.2010. To avoid these kinds of delays in the suit, proviso was added to Order 6 Rule 17 of the CPC and the judgment relied upon by the learned counsel for the petitioners in the case of **Abdul Rehman and another (Supra)** is not applicable to the facts and circumstance of the present case because even the petitioners have not come to the Court with clean hands as they had

tried to mislead the Court by making an averment in para 6 of the application to overcome the delay alleging that the mutation No.179 dated 11.12.1935 was not within their knowledge though it has been recorded by the Appellate Court that the said mutation was already produced on record as Ex.D4 and not by way of application for additional evidence.

In view of the aforesaid facts and circumstances, I do not find any merit in the present petition and the same is hereby dismissed, however, without any order as to costs.

05.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE