

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4703 of 2013
Date of Decision: November 30, 2015

Nitin

...Petitioner

Versus

Sandeep Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.Karan Singh, Advocate,
for the petitioner.

Mr.C.B.Goel, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the order dated 3.7.2013 (Annexure P-4) in declining the application to amend paragraph 5 of the written statement on the premise that as per Will dated 25.9.1989, the property was left by the testator, but the same has not been included in the suit.

Mr.Karan Singh, learned counsel appearing on behalf of the petitioner-defendant contends that already vide judgment dated 21.1.2010 passed in Regular Second Appeal No.1964 of 2009 (Nitin and another Versus Municipal Committee, Yamuna Nagar and others), the contents of the aforementioned Will have been extracted and the respondent-plaintiff has been declared owner to the extent of half share in respect of the property left by the testator. Half share has been bequeathed by the testator in favour

of his clients. In order to avoid the suit being barred by partial partition and to get separate possession of the property after getting the same partitioned, it is essential and necessary for seeking the amendment of the written statement, even if the suit has reached the stage of final hearing and since the law with regard to seeking amendment of the written statement vis-a-vis the plaint, is liberal. He further submits that his client would not be leading any fresh evidence in respect of the proposed amendment, as already share has been determined in the judgment dated 21.1.2010 rendered in RSA No.1964 of 2009.

Mr.C.B.Goel, learned counsel appearing on behalf of the respondent-plaintiff submits that the petitioner-defendant is delaying the decision of the trial Court and once the Will has been admitted, nothing remains between the parties to prevent the trial Court to pass the decree.

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

The amendment sought to be incorporated in the written statement reads thus:-

“That as per registered will dated 25-9-1989 executed and registered by Late Shri Shyam Singh in favour of the father of defendant no.1 and plaintiff, the applicants/defendants are joint owners of the property as mentioned in the head note of the plaint i.e. The residential property mentioned as H.No.443, at Yamuna Nagar, and/presidential house, baithak and Gher situated within the abadi of village Akalgarh, District Yamuna Nagar and such the suit is liable to be dismissed being partial partition.”

In my view, the amendment, aforementioned, is essential and necessary for the adjudication of the controversy between the parties,

otherwise the objection may come that the suit is hit by partial partition. The contents of the Will extracted by this Court in the aforementioned Regular Second Appeal also reveal that the property owned by the testator, sought to be incorporated by way of amendment.

In view of the aforementioned facts and circumstances, the impugned order dismissing the application is set-aside. Application seeking amendment of the written statement is allowed. The petitioner-defendant is entitled to cause the amendment as mentioned in application (Annexure P3).

It is made clear that the petitioner-defendant will not be granted any opportunity to lead evidence in respect of the aforementioned proposed amendment. The respondent-plaintiff would be at liberty to file amended replication.

The trial Court is directed to make an endeavor to decide the suit as expeditiously as possible.

Revision petition stands allowed.

November 30, 2015
ramesh

(AMIT RAWAL)
JUDGE