

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5835 of 2014
Date of decision : October 12, 2015

Ashok Kumar

..... Petitioner

Versus

Moti Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Khurana, Advocate
for the petitioner.

Mr. Sandeep Singh Rana, Advocate
for respondent No.1.

Mr. Aman Vashisht, Advocate
for respondent No.3.

Mr. Jitender S. Chahal, Advocate
for respondent No.4.

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?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 15.7.2014 whereby an application moved on behalf of defendants No. 3 under Order 6 Rule 17 CPC has been declined.

Learned counsel appearing on behalf of the petitioner-defendant No.3 submits that in response to the receipt of copy of the suit, all the defendants had filed a joint written statement setting up a Will dated 13.1.1999 executed by Radha Krishan, their father and as well as family settlement. He further submits that the petitioner-defendant No.3 did not know about the contents of the

written statement and believed the averments made in the written statement to be correct. It is only at the stage of evidence of the plaintiffs-the petitioner- defendant No.3 acquired the knowledge of taking up the plea of family settlement in the written statement. It is in these circumstances the application was filed in order to seek permission of the court to file a separate written statement.

Mr. Aman Vashisht, learned counsel appearing on behalf of respondent No.3 submits that the written statement was filed on behalf of defendant Nos. 2 and 3 by a single counsel and it also bore the signatures of defendant No.3. Since the respondent-plaintiff had also pleaded the family settlement and in view of the categorical admission in the written statement, there was no occasion for the plaintiff to prove the family settlement yet the factum of same was incorporated in the affidavit submitted by way of examination-in-chief. The witnesses of the plaintiffs including plaintiff were effectively cross-examined and the matter was listed for defendant's evidence.

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

The plea as noticed above set up by the petitioner-defendant No.3, amounts to withdrawal of the admission, and further in my view, tantamounts to apparent collusion between defendant Nos. 2 and 3. Until and unless there are cogent reasons, much less explanation, assigned in seeking the amendment the court should not permit the parties to seek the amendment of the pleadings as it seriously prejudice the rights accrued in favour of the opposite party. It is a

matter of record that the petitioner-defendant No.3 is a graduate. Thus, he would be knowing the intricacies of the pleadings culled out in the joint written statement. The trial court had rightly dismissed the application on the ground that the factum of Will and family settlement was in the knowledge of the parties and after detail deliberation, the same was incorporated in the written statement, which was duly signed.

I do not intend to differ with the finding rendered by trial court which is based on appreciation of oral and documentary evidence.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

October 12, 2015
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