

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 6860 of 2014

DATE OF DECISION : December 01, 2015

Smt. Kela Devi alias Kanta Devi & ors.

..... PETITIONER(S)

VERSUS

Seema Devi

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

**Present: Mr. Amit Jain, Advocate, for the petitioners.
Mr. R.K. Saini, Advocate, for the respondent.**

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Vide order being assailed, dated 09.05.2014, rendered by Civil Judge (Junior Division), Gurgaon, application moved by the plaintiff-respondent i.e. Seema Devi daughter of late Karan Singh, seeking amendment in the plaint, had since been allowed.

The conclusion recorded by the trial court, reads as thus:-

provision it is clear that court may at any stage allow amendment of pleading to either party of the suit. However the court has to see that such amendment should not cause any prejudice or inconvenience to the other party or give the other party a surprising shock. But if the trial has commenced, no amendment should be allowed except one which concerned party could not make even after due diligence. By the proposed amendment, the plaintiff wants to incorporate the relief of partition of the suit property with mets and bounds and want to implead Ms. Deepa as party in the present suit. The plaintiff originally filed the present suit for declaration with consequential relief of permanent injunction against the defendants who are her mother and brothers. However, later on the present application was filed to incorporate the relief of partition of the suit property and to incorporate Ms. Deepa who is sister of plaintiff and also co-sharers in the suit property. The plaintiff/applicant has submitted that due to lack of legal advice this relief was not originally sought. This contention of applicant/plaintiff is not sustainable in the eyes of law as every person is presumed to be aware of his right. Ignorance of law is no excuse. However, keeping in view the spirit of order 6 Rule 17 it has to be seen that whether this application is necessary for proper adjudication of the case and avoid multiplicity of proceedings or not. The original suit is a suit for declaration with permanent injunction. According to plaintiff, the parties are co-sharers in the suit property and it is but natural that a suit for partition by either of the parties has to be filed. Hence, the proposed relief may be incorporated in the present suit to avoid multiplicity of proceedings. Moreover, in the present case plaintiffs's evidence has not yet started so it cannot

be said that the suit is at the very belated stage. The stage of the suit has to be seen according to the proceedings conducted in the case and not the time period. Moreover, the proposed amendment will not cause prejudice to the defendants. Moreover, it is settled proposition of law that any application or suit should be decided on merits and not on technical grounds. Furthermore, it has been laid down by the Hon'ble Supreme Court as well as various High Courts that if there is possibility than amendment applications should be allowed liberally except if it causes prejudice to the other party. Even if the inconvenience caused to the opposite party can be compensated in terms of money, then also application for amendment should be allowed. For this view I draw support from the authorities of Raj Kumar Gurawara Vs M/s S.K.Sarvagi and Company Pvt. Ltd. and another 2009 (1) CCC 001 (SC), Sahib Singh and another Vs Kuldeep Kumar and others 2011(1) CCC 461 (P&H). After incorporating the relief of partition, it is necessary to implead Ms. Deepa as party in the present as in suit for partition all the co-sharers are necessary parties.

8. In the said scenario and cited authorities and legal provision, the application for amendment and impleadment is, hereby, allowed subject to cost of Rs.4000/- out of which Rs.2000/- to be given to the opposite party and Rs.2000/- to be deposited in DLSA, Gurgaon."

Concededly, in a suit filed by the plaintiff-respondent, she prayed for a declaration that the judgment and decree dated 16.03.2005, passed in Civil Suit No. 102 of 2004, was wholly illegal, void and inoperative against the rights of the plaintiff. As the dispute is qua the estate of her father i.e. late

Karan Singh, who died on 24.02.2003, plaintiff along with the defendants had succeeded to the estate of the deceased to the extent of 1/5th share each. Meaning thereby, originally, what the plaintiff prayed for was a decree for joint possession and, vide a proposed amendment, she has prayed for partition of the joint property. And of course, as Smt. Deepa also happened to be one of the daughter of late Karan Singh, to array her as party defendant.

Ex-facie, plaintiff does not gain anything by delaying the proceedings as she herself has instituted the suit. Evidence of the plaintiff is yet to commence as even before the amendment prayed for was granted, though the court had framed issues, but evidence of the plaintiff had not yet commenced. Undoubtedly, the amendment that has been granted would avert multiplicity of proceedings and any further complication in the matter.

That being so, no interference is warranted in exercise of revisional jurisdiction under Article 227 of the Constitution of India. Petition being devoid of merit is, accordingly, dismissed.

DECEMBER 01, 2015
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(ARUN PALLI)
JUDGE