

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

CR No. 7322 of 2014 (O&M)

Date of decision: 14.12.2015

Mukhtiar Singh

... Petitioner

versus

Harbhajan Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Maharaj Kumar, Advocate for the petitioner.

Mr. Parminder Singh, Advocate for the respondent.

Mr. Deepak Sharma, Advocate for '

Mr. Pankaj Bali, Advocate for respondent No.4.

K.Kannan, J.

The petition for amendment of the written statement was brought by a brother who has a contention to make that the suit for partition by the plaintiff is not competent and that there had been a partition already made in the family several years back. According to the plaintiff he was in exclusive possession of the property allotted to him and every other co-sharer was also allotted separate properties in respect of which constructions were made by them for their own separate enjoyment. If the plaintiff's side was closed and the petitioner,

who is one of the defendants, was examined and had closed his evidence and when the evidence of other defendants was progressing, the application was filed to bring forth additional facts on the original pleadings by way of amendment. I have seen through the amendment sought to be brought before the Court below. The defendant has reiterated the case of prior partition and given the instances of the details of such partition and the sales effected by the plaintiff in respect of his own separate share. The defendant has pleaded that he has sold all the properties that were allotted to him and there is no more right for the plaintiff to exercise for securing the separate possession.

The counsel appearing on behalf of the respondent states that the plaintiff's right to share in the property are reflected in the jamabandi entries and the defendant would not plead that all the shares in the properties have been sold as bringing a new contention which is inconsistent with the earlier one. It is a further plea that the contentions raised in the written statement by way of amendment cannot be stated to be such of those matters which were not already within the knowledge of the defendant and the amendment cannot stand the test of the circumstances when such amendment could be allowed after the trial has commenced, in terms of the amended provisions of Order 6 Rule 17 CPC.

The judicial approach relating to amendment of pleadings by the plaintiff and the defendant has to be seen differently although pleadings under Order 6 employ more generic expression that includes

both the plaint and the written statement. While amendment of the plaint would be always decided with a strict application of the principles provided under Order 6 Rule 17, the latitude of discretion that is available for a Court to allow for amendment of written statement is relatively greater. This is on account of the fact that the defendant enjoys certain privileges which the plaintiff does not. For instance, the defendant has even a right to take inconsistent pleas while the plaintiff cannot. All that the Court will see is whether an amendment is such as that it withdraws an important admission or makes any statement which can cause a prejudice to the opposite side. In this case, the amendment is only clarificatory in nature detailing several instances that would go to support the plea already made that there has been a prior partition and the relief of partition and separate possession through the suit is not competent. In so doing, the defendant also adds a potent ground that the plaintiff has sold whatever he shall be entitled and he was not entitled to reopen the partition. I will not find this to be an inconsistent plea but an additional plea which will go into reckoning on the facts disclosed through the amendment.

All this discourse is not to approve of an attempt of defendant to amend the written statement at any time, the lack of diligence of failing to state of what was relevant will be again seen from how it affects the course of trial. There are still some defendants who were required to be examined and the amendment application came to be filed after one of the defendants was examined and in the

course of trial, I will relax the strict application to the extent that the law itself provides and would bring the scales even by imposing cost on the defendant for bringing the amendment at a belated stage and causing a needless further delay in the progress of the trial.

The panacea in all such delays would be imposing of cost and in this case I would award Rs. 15,000/- as cost payable to the contesting respondents-plaintiffs.

The plaintiffs shall have a liberty to file his own reply/rejoinder to the amended pleadings to the extent that they are relevant to the amended portions of the written statement.

If the defendant would offer any additional evidence, the plaintiff, needless to state shall have a right of rebuttal at the appropriate stage after the conclusion of evidence by the defendants.

The revision petition is allowed on the above terms.

The defendant appears to have already given the statement that he would lead no evidence on the amended pleadings. Consequently, the court need not give any opportunity to the defendant to offer any further evidence. The plaintiff however may be at liberty to give any rebuttal evidence if he so chooses after the conclusion of the defendant's evidence.

(K.KANNAN)
JUDGE

14.12.2015

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