

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-7491-2014

Date of decision: 22.09.2015

Suraj Bhan and others

..... Petitioners

Versus

Smt. Amita Rani Mittal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

PRESENT: Mr. Ajay Jain, Advocate for the petitioners.

Mr. Mani Ram Verma, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

Challenge in the present petition is to the order dated 07.10.2014 (Annexure P-6), whereby the application dated 29.05.2014 (Annexure P-3) filed by the petitioners-defendants No. 72, 73 and 78, namely; Suraj Bhan, Hari Parkash and Hari Om, under Order VI Rule 17 read with Section 151 CPC for amendment of the written statement was dismissed by the trial Court.

Mr. Ajay Jain, learned counsel appearing for petitioners-defendants submits that the amendment sought to be incorporated, is only explanatory in nature and would not alter the nature of defence as well as it amount to withdrawal of admissions as it would help the Court in drawing a decree, in a suit for partition seeking separate possession.

Mr. Mani Ram Verma, learned counsel appearing for respondents submits that in a suit for partition all the parties are arrayed

as co-owners and it is immaterial that whether the plaintiff is defendant or defendant is plaintiff. The petitioners-defendants are subsequent co-sharers deriving the interest from Chander Pati, Raj Kumari etc. He further submits that the amendment can be sought only at the initial stage of suit and not at the stage, when the case has reached at defendants' evidence.

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

The contention of Mr. Ajay Jain, learned counsel appearing for petitioners-defendants, that the amendment is essential and necessary for adjudication of the suit is liable to be rejected on the ground that there is no mention of expression "*despite exercise of due diligence*" which is essential requirement of law, to seek amendment. The amendment sought to be incorporated, in my view, would effect the rights of the petitioners-defendants in a suit for partition.

There is no illegality, much less, perversity in the impugned order and the same cannot be said to have been passed without jurisdiction. The instant revision petition is devoid of merits, accordingly, the same is dismissed

September 22, 2015
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(AMIT RAWAL)
JUDGE