

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 841 of 2014

Date of Decision: May 8, 2015

Jaswinder Singh

.....Petitioner

Vs.

Paramjit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.S.S. Swaich, Advocate
for the petitioner.

Mr. Abhishek Arora, Advocate.

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M.M.S. BEDI, J.

This order will dispose of a revision petition filed by defendant No.1 – petitioner challenging the order dated January 20, 2014 (annexure P-6), under Article 227 of the Constitution of India, dismissing the application under Order 6 Rule 17 CPC filed by him for the amendment of written statement. Plaintiff- respondent No.1 Paramjit Singh has filed a suit for partition of the residential house mentioned in the heading of the plaint in the trial Court claiming separate possession of 1/3rd share in the suit property. After framing of issues, the petitioner filed an application for

amendment of the written statement claiming that in the written statement filed by him, he disclosed the entire facts to his previous counsel but he did not mention the entire facts while filing the written statement. When he engaged another counsel, on inspection of the case file, he came to learn that the evidence of the defendant- petitioner had been closed without his consent. Petitioner in his application for amendment of written statement wanted to incorporate in para 1, in reply on merits, the following averments:-

“It is mentioned here that previously the suit property was owned and possessed by Ajmer Kaur mother of the parties to the suit as the suit property was purchased by said Ajmer Kaur through registered sale deed bearing Vasika No 180 dt. 20.10.1970 from Sukhdev Singh s/o Sh Natha Singh s/o Sh. Kapoor Singh r/o Sirhind City Tehsil and Distt. Fatehgarh Sahib and at the time of execution and registration of said sale deed said Sukhdev Singh delivered the possession of the suit property to said Ajmer Kaur It is mentioned here that there was another property shown in red colour in the site plan attached with the written statement situated near the suit property which was owned and possessed by the father of the parties to the suit. The mother of the parties to the suit has died about 6/7 years ago. During her life

time the mother of the parties to the suit orally partitioned her property as well as property of Pritam Singh father of the parties to the suit through an oral family settlement and in the said oral family settlement the suit property fell into the share of the answering defendant and the property shown in red colour in the site plan attached with the written statement fell into the share of the plaintiff. After that the plaintiff sold the property shown in red colour in the site plan attached with the written statement to Pardeep Kaushal and Bachan Singh with the consent of the defendant and their mother but the sale consideration of the property shown in red colour in the site plan attached with the written statement was kept by the plaintiff alone with him and nothing was paid to the answering defendant out of the said sale consideration as the said property came into the share of the plaintiff and the suit property came into the share of the answering defendant. Thus the plaintiff has no right, title, interest, share concern or connection with the suit property in any manner. It is further mentioned here that after the above said oral family settlement the answering defendant got installed an electric meter connection bearing Account No K51KB921032W in his

name in the suit property and is regularly paying the electricity charges of the same. Since the above said oral family settlement, the answering defendant is residing in the suit property alongwith his family members. Now the plaintiff is residing in some portion of the other property which bears Khasra numbers which is jointly owned and possessed by the plaintiff and answering defendant. The plaintiff has no concern or connection with the suit property. Under the garb of the present suit the plaintiff wants to grab the property of the answering defendant. It is mentioned here that the plaintiff is a criminal and bravo type of person and an FIR No 175 dt.18.10.2012 u/ss 419/ 420/ 406/ 465/ 468/ 471/ 120B IPC has also been registered at PS Fatehgarh Sahib against the plaintiff. Site plan and copies of sale deed dt 20.10.1970 and FIR No. 175 dt. 18.10.2012 are attached herewith”

The defendant claimed that the said amendment is necessary for the just and proper decision of the suit. The trial Court has dismissed the application observing that the petitioner had engaged a counsel who had closed the evidence in affirmative after three effective opportunities were given to the petitioner and that the petitioner wanted to bring altogether new facts in the case which were not pleaded by him in his original written

statement and that the amendment had been sought after the trial had commenced.

Learned counsel for the petitioner Mr. S.S. Swaich has vehemently urged that the proposed amendment is necessary as the litigation is for partition and entitlement of the share of the parties which were required to be determined before effecting actual partition by meets and bounds. The proposed amendment of the written statement regarding family partition and acquiring exclusive ownership over the suit property by the defendant- petitioner was necessary for the purpose of determining the real question in controversy between the parties and was necessary for the just decision of the case. As the earlier counsel did not conduct the case properly and being himself ill-conversed with the legal technicalities, he could not file the application for amendment at earlier stage. The defendant- petitioner wants to incorporate a plea that on the basis of oral partition, the plaintiff has got no right, title and interest in the suit property and that being residing on some portion of other property which is jointly owned and possessed by the plaintiff and the petitioner, he has got no concern with the suit property. The description of any other property has not been given even in the amended written statement. The vague pleadings in the amended written statement will not, in any manner, support the cause of the petitioner. The factum of plaintiff being resident of any other joint property must have been known to the petitioner from the very beginning. He cannot be permitted to incorporate new pleas.

I have considered the judgment cited by counsel for the petitioner in **Andhra Bank Vs. ABN Amro Bank N.V. and others**, 2007 (3) RCR (Civil) 585, **Usha Balashaheb Swami and ors. Vs. Kiran Appaso Swami and ors.**, 2007 (2) RCR (Civil) 830 and **South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and ors.**, 2008 (4) RCR (Civil) 513, wherein it has been laid that amendment in the written statement may be allowed by adding facts if it is necessary for the just decision of the case.

There is no dispute regarding the proposition of law laid down in the above said judgments but the pleas which are sought to be incorporated are vague, uncertain and even if these are presumed to be correct, it cannot be said that these were not within the knowledge of defendant No.1/ petitioner or that the same could not be brought on the record. The case has reached at the final stage.

In view of the said circumstance, no ground is made out for amendment of the written statement.

The petition is dismissed without prejudice to the rights of the petitioner under Order 43 Rule 1 (a) CPC.

May 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE