

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 8481 of 2014 (O&M)
Date of decision: 28.7.2015

Yogender Kumar

.. Petitioner

v.

Smt. Nisha Rathi @ Nisha Bala and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Suryakant Gautam, Advocate for the petitioner.
Mr. Bhupinder Singh, Advocate for respondent No. 1.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 4.11.2014, passed by the court below, whereby the application for seeking amendment of the written statement filed by the petitioner-defendants No. 1 to 3, was rejected.

Learned counsel for the petitioner submitted that suit was filed by respondents No. 1 and 2 claiming that they along with defendants No. 4 to 7 are owners in possession of the suit property. Challenge was also made to a judgment and decree dated 17.9.2014 passed in civil Suit No. 675 of 1994 –Gyaneshwar and others v. Atul Kumar and others. The application for amendment was made claiming that inadvertently, a preliminary objection was not taken in the written statement already filed to the effect that the plaintiffs and proforma defendants have made claim more than their respective shares in the suit property. It was submitted that no further evidence is required to be led and amendment even would not prejudice the plaintiffs and proforma defendants.

Learned counsel for respondent no. 1 submitted that in the suit filed, the claim is only that the plaintiffs along with defendants No. 4 to 7 are owners in possession of the suit property. Only the details of the suit property have been furnished in the plaint and not the extent of ownership. All are to share the property equally. In any case, the petitioner does not have any reason to raise that issue as his interest is only limited to the challenge to the decree passed in his favour, hence, the amendment being unnecessary, the court below has rightly declined the same. He further submitted that trial in the case having already commenced, the amendment could not be allowed as due diligence has not even been pleaded.

After hearing learned counsel for the parties, in my opinion, there is no merit in the present petition. In the suit, the prayer is for declaration that the plaintiffs and proforma defendants No. 4 to 7 are owners of the suit property. Challenge has also been made to the judgment and decree dated 17.9.2014 passed in Civil Suit No. 675 of 1994—Gyaneshwar and others v. Atul Kumar and others. The decree was in favour of defendants No. 1 to 3. Specific shares coming to the plaintiffs or defendants No. 4 to 7 have not been mentioned, rather, only the details of the property in which share is being claimed, have been mentioned. The claim for share in the property is not being contested with the petitioner, who is one of defendants No. 1 to 3, hence, he has nothing to do with the same. The amendment as such sought has no relevance with the issues to be decided.

Accordingly, the present petition is dismissed.

(Rajesh Bindal)
Judge

28.7.2015
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