

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

CR No.1279 of 2014

Date of decision :17.05.2016

Ram Niwas and others

..... Petitioners

Versus

Lilu and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sumit Gupta, Advocate
for the petitioners.

Mr. Ashwani Bharadwaj, Advocate
for the respondents.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 23.01.2014 passed by the learned Additional Civil Judge (Senior Division), Jhajjar, whereby the application filed by the petitioner-defendants no.2 to 4 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short CPC), for amendment of the written statement has been dismissed.

2. Learned counsel for the petitioners contended that the petitioners are Jat by caste and are governed by Customary Law. The petitioners only want to add the plea in written statement that they are governed by Customary Law and that will not change the nature of the suit. He contended that the law regarding amendment of written statement is quite liberal and stands on different footings than for amendment of the plaint. In the written statement, even a new defence can be added by way of amendment. To support his contentions, he relied upon case **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. 2007(2) R.C.R (Civil) 830**. Thus, he contended that the learned trial Court has wrongly dismissed the application.

3. On the other hand, learned counsel for the respondents contended that the application for amendment of written statement has been moved when the case has reached at the stage of rebuttal evidence. The plea sought to be add was already in the knowledge of the petitioners from very beginning. No explanation has been given in the application as to why this plea was not earlier raised. Thus, the application has been rightly dismissed by the learned trial Court. To support his contentions, he relied upon case **Charan Kaur and anothr Vs. Pritam Singh and others 2006 (2) R.C.R (Civil) 64**.

4. I have duly considered the aforesaid contentions.

5. The plaintiff-respondents have filed the suit for declaration to the effect that the release deed dated 09.08.2002 and 26.03.2004 and consequent mutations are illegal, null and void and not binding on the rights of the plaintiffs. It was pleaded that the said release deeds were executed by Tule Ram during his lifetime. The suit property was ancestral property. The parties are governed by Hindu Law. The plaintiffs had got the right in the suit property by birth and Tule Ram was not competent to transfer the land.

6. Petitioner-defendants moved the application for amendment of the written statement in order to take the plea that the parties belong to Jat/Jamidara family. They are agriculturist and are governed by Customary Law. No such plea was raised by the petitioners in the original written statement. The present application was moved when the suit was pending at the stage of rebuttal evidence. I do not find any substance that the proposed amendment will not cause any prejudice to the rights of the respondents as in the original written statement the plea raised in the plaint that parties are governed by Hindu Law has not been disputed. Now, the petitioners want to take the plea that they are governed by Customary Law, which will certainly change the nature of the suit and will result in prejudice to the respondents as the law regarding alienation in Customary Law and Hindu Law is not the similar.

7. Moreover, the application has been moved at belated stage. This plea was available to the petitioners even at the time of filing the original written statement. No satisfactory explanation has been given in the application as to why this plea was not earlier taken by the petitioners at the time of filing the written statement.

8. Consequently, I do not find any illegality in the impugned order dated 23.01.2014 passed by the learned trial Court.

9. Thus, the present revision petition having no merits, is hereby dismissed.

17.05.2016

S.khan

**(DARSHAN SINGH)
JUDGE**