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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-179-2015

Date of Decision : March 17th, 2016

Dalip and others

.... Petitioners

Versus

Shri Hari Chand and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Veneet Sharma, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 16.07.2014 [Annexure P/1] whereby application filed by the defendants under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 for amendment of the written statement, was declined.

Learned counsel for the petitioner submitted that oral partition had taken place and the said partition deed dated 15.4.1996 was most essential document to be placed on record and thus, the amendment of written statement was sought on that ground.

Having considered the submissions made by learned counsel for the petitioners, this Court is of the considered view that the petitioners had filed their written statement and on the basis of pleadings of the parties, issues were framed by the Court below. At that stage, the application for

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amendment of written statement under Order VI Rule 17 CPC was filed while the trial was going on.

Order VI Rule 17 CPC reads as under:-

“17. Amendment of Pleadings.- The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

As per above provisions of law, amendment of pleadings can be allowed before commencement of the trial and after commencement of the trial, amendment can be allowed only, if the Court comes to the conclusion that inspite of due diligence, the party could not raise the matter before the commencement of the trial. But, this is not the case before the Court below because partition deed was executed on 15.4.1996 and the same was not a registered document. More so, the said partition deed may not be relevant to the present controversy. The said fact could have been pleaded in the written statement filed in this case earlier as the alleged partition deed dated 15.4.1996 was in existence and in the knowledge of the petitioners at the time of filing of their written statement.

In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

March 17th, 2016
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