

CR No.1686 of 2014

{1}

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.1686 of 2014

Date of decision:13.07.2016

Gian Singh and another

... Petitioners

Vs.

Charan Singh and others

... Respondent

CR No.1688 of 2014

Baljinder Singh and others

... Petitioners

Vs.

Charan Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Vijay Lath, Advocate
for respondents No.1 and 2.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two revision petitions bearing No.1686 and 1688 of 2014.

CR No.1688 of 2014 is against the order, whereby, the application at the instance of the defendants for seeking amendment of the

written statement incorporating the plea of partial partition has been declined.

In CR No.1686 of 2014, challenge has been laid to the order, whereby, the application at the instance of the plaintiffs for exclusion of the counter claim, has been allowed.

Mr. Kunal Dawar, learned counsel appearing on behalf of the petitioners submits that suit is at the initial stage, the amendment is sought for incorporating the plea of partial partition as there are other certain properties which have not been stated. Vis-a-vis counter claim, same plea has been sought to be incorporated and the Court erroneously dismissed the application for amendment and allowed the application for exclusion of the counter claim and thus, urges this Court for setting aside the orders under challenge.

Mr. Vijay Lath, learned counsel appearing on behalf of respondents No.1 and 2 submits that in the suit for partition, all the parties are in possession then counter claim cannot be set up and plea of partial partition was already in the knowledge and therefore, there was non-compliance of the expression “despite exercise of due diligence” rightly so, the application has been dismissed and therefore, urges this Court for affirming the orders under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit and substance in the submissions of Mr. Dawar in CR No.1688 of 2014, whereby, the application for amendment of the written statement has been declined. A party can be

permitted to take the plea of partial partition. I am of the view that suit is at the initial stage, such plea is legal one, thus, in order to prevent miscarriage of justice, the application seeking amendment in paragraph 5 of the written statement is ordered to be allowed and the impugned order is hereby set aside.

As regards the counter claim, all the parties are basically litigating the identical cause of action and therefore, cannot set up independent counter claim. At the best, the plea of partial partition can be taken in defence and rightly so, the application at the instance of the respondent-plaintiffs for exclusion, has been allowed and the order cannot be said to have been passed without jurisdiction.

In view of the aforementioned observations, CR No.1688 of 2014 is allowed and CR No.1686 is dismissed.

(AMIT RAWAL)
JUDGE

July 13, 2016
savita