

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2285 of 2014 (O&M)

Date of decision : March 31, 2016

Tara Singh and others

..... Petitioners

Versus

Tej Kaur

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Achin Gupta, Advocate
for the petitioners.

Mr. P. K. S. Phoolka, Advocate
for the petitioners.

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

Amit Rawal, J (oral).

The petitioners-defendants are aggrieved of the dismissal of the application filed under Order 6 Rule 17 CPC.

Learned counsel appearing on behalf of the petitioners submits that in a suit for declaration, the petitioners-defendants had filed written statement and wanted to seek amendment of the written statement by incorporating legal objections 9 and 10 as well as counter claim under the provisions of Order 8 Rule 6-A CPC which has erroneously been dismissed.

He further submits that plea of adverse possession by way of counter claim can be taken.

Learned counsel appearing on behalf of the respondents submits that there is no doubt with regard to setting up of the claim. The counter claim has to be treated as an independent suit and therefore, the claim of adverse possession in affirmative cannot be set up. In support of his contentions, relies upon the judgment of Rajasthan High Court in Bhanwar Lal Vs. Chagan Lal and another 2013 (2) Civcc 526, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that the suit is still at the stage of evidence of the plaintiffs. The parameters for seeking amendment of the plaint and written statement are totally different. The legal objections No.9 and 10 sought to be incorporated will not seriously pre judge the rights of the plaintiffs. However, viz-a-viz finding of the trial court qua setting up of the counter claim by holding that the applicants would become plaintiffs, I am of the view that counter claim has to be decided along with the suit. Even in case, the suit is withdrawn, the counter claim as per provisions of Order 8 Rule 6 CPC would continue but the fact remains that the plea of adverse possession by way of counter claim seeking declaration is not permissible as it would be a plea in affirmative, this view of supported by the judgment rendered by this Court in Gurdev Singh Vs. Gurbax Singh and another 2010(4) PLR 746

The petitioners-defendants are allowed to incorporate the amendment viz-a-viz legal objections No. 9 and 10 only. However, setting up plea of adverse possession in the counter

claim is rejected.

The revision petition is partly allowed.

(AMIT RAWAL)
JUDGE

March 31, 2016
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