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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2689-2014 [O&M]

Date of Decision : February 1st, 2016

Mahant Jagmohan Singh

.... Petitioner

Versus

Mahant Karamjit Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. K.S.Khehar, Advocate,
for the petitioner.

Ms. Alka Sarin, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India is for setting aside order dated 9.4.2014 passed by Additional Civil Judge [Senior Division], Jagadhri whereby application under Order VI Rule 17 CPC for amendment of counter-claim filed by the plaintiff [petitioner herein] was dismissed.

2. Learned counsel for the petitioner, while assailing the order dated 9.4.2014, submitted that in the main suit, an application under Order VII Rule 11 CPC for rejection of the plaint was filed on account of Haryana Registration and Regulation of the Society Act, 2012 [hereinafter referred

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to as “the 2012 Act”. The petitioner replied to the said application that the 2012 Act was not applicable to the case in hand. As per the petitioner, the defendants changed the nature of trust deed in order to grab the property of the Trust and that has been done during the pendency of the suit. The petitioner wanted to incorporate the subsequent developments by way of amendment of his counter-claim to the following effect:-

“(i). That sub para (x) of para No. 2 of Counter Claim will be added as under:-

“and for declaration that the impugned trust deed alleged to have been registered under Haryana Registration and regulation of the Society Act, 2012 dated 14.06.2013 and its registration certificate obtained by defendants during the pendency of the case, which came to notice of the plaintiff is absolutely wrong, illegal, null and void and not operative on the right of the plaintiff & Trust and is not tenable in the eyes of law”

(ii). That para No. 15(a) in counter claim filed by the plaintiff will be inserted as under :-

“That during pendency of the case, recently in 2013, defendants in connivance with alleged trustees changed trust deed with malafide intention with a view to grab the property of the trust illegally and unauthorizedly. In fact the defendants or any alleged trustees have absolutely no right to change the terms and condition of the trust founded by Sant Nischal Singh Ji in the year 1966 and on perusal of the alleged trust deed which has been produced by the defendant, it is clear that the defendants have changed all the aims and objects of the trust with a view to earn the money. Not only this, under the heading of word condition clause (v), it is clearly mentioned that if upon winding up or dissolution of society there remains after satisfaction of debts of liability or any provision whatsoever, same shall not be paid or distributed to the members of the society but the same be given

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or transferred to other institution having object similar to object of the society to be determined by the member of the society at or before the time of dissolution. This change itself shows that the alleged trustees including defendants are clearly bent upon to transfer the properties to some other society which was never intended by the founder of the trust who did not use the word society in original trust deed and he only founded the trust and the alleged properties cannot be transferred to the alleged society. Even otherwise, the trust cannot be registered under the Haryana Registration and Regulation of the Society Act, 2012. The trust is an independent body and same cannot be registered Haryana Registration and Regulation of the Society Act, 2012. The preamble of the above said act says that to consolidate the law relating to the registration and regulation of Society in State of Haryana promoting art, fine art support, religion, science, any public or charitable purpose and for matter connecting therewith. From the reading of this Act, it is clear that trust cannot be registered as a society and even otherwise, society has been given independent statutory status and consequently the properties alleged to be vest in the trust cannot be transferred to the society alleged to have been registered under the above said Act without registered transfer deed from Sub Registrar under Indian Registration Act. The impugned registration certificate dt: 14.06.2013 and memorandum rules and regulation of association Sant Nischal Singh trust registered Yamunanagar [Amendmented](sic) are absoutely wrong, illegal, null and void, non-operative.”

3. Learned counsel for the petitioner further submitted that the proposed amendment has become essential. More so, the plaintiff has filed a separate suit challenging the amendment in the trust deed of the year 1966 and the proposed amendments are essential and the application be allowed.

4. Respondents in their reply to the application had taken the plea

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that Societies Registration Act, 1860 has been repealed vide Section 92 of the revised Act No.1 of 2012 i.e. 2012 Act. However, the respondents denied that the constitution of the Trust was amended to grab the properties of the Trust, rather, the constitution of the Trust was amended as per the provisions of 2012 Act. Aims and purposes of the Trust have been enlarged as per provisions of the Trust. No subsequent event has taken place calling for any amendment. The proposed amendments are not essential at all and it was prayed that the application be dismissed.

5. Learned counsel for the petitioner further submitted that in fact, the respondents are taking contradictory stands in different litigation. In other suit filed by the plaintiff, the plea was taken in the written statement that the Civil Court has no jurisdiction to entertain and proceed with the said suit in view of the bar under Section 89 of the 2012 Act and in the present litigation, the respondents-defendants are taking contrary plea. More so, Shri Balvinder Singh and Sh. I.S.Bhatia, learned counsel for the defendants had made the following statement before the Court below:-

“ I state that regarding suit property, previous suit Jagmohan Singh Vs. Karamjit Singh etc. regarding previous property the status quo order has been passed. We will be bound to respect that. Till this injunction application is decided we will not pass any such resolution which affects the right of the respondent regarding the suit property of status quo.”

6. However, still the constitution of the Trust was changed. That way, the proposed amendment had become essential, but the Court below wrongly dismissed the application.

7. Learned counsel for the respondents took the plea that the Civil Suit was filed before the Court below in the year 2003 and the matter is

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being delayed for one reason or the other and the application for amendment was filed when the case is at the fag end i.e., at the stage of arguments after leading of evidence by the parties. More so, the petitioner came to know on 18.3.2013 and still, the application was filed in March, 2014 only. She also took the plea that counter-claim at the instance of plaintiff is not maintainable and if counter-claim is not maintainable at the instance of the plaintiff, the amendment in the counter-claim is also not maintainable and the Court below has rightly dismissed the application.

8. Having considered the submissions made by learned counsel for the parties and going through the material available on the file, this Court is of the considered view that the application has been filed by the petitioner at much belated stage when the case is fixed for arguments after conclusion of evidence. The Court below has rightly observed that the civil suit was filed in the year 2003 and issues were framed on the basis of pleadings of the parties on 4.11.2003. Thereafter, the trust deed was amended in the year 2009 and the parties led their respective evidence, whereas the application for amendment of counter-claim was filed only on 21.3.2014. As per amended provisions of Order VI Rule 17 CPC, amendment of pleadings is permissible before the commencement of the trial if the proposed amendment is essential for the just decision of the case. Needless to mention that power has been given to the Court to allow amendment at any stage but only if the Court comes to the conclusion that inspite of due diligence, the party could not take such a plea before the commencement of the trial. That is not the case before this Court. Learned trial Judge has rightly took the view that such an amendment is not permissible as per amended provisions of law.

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9. Taking the case from another angle that another suit challenging the amended trust deed, which is in fact, the matter in controversy for which proposed amendment has been sought, is pending separately before Civil Judge [Junior Division], Jagadhri and for that reason also, the proposed amendment in the present suit is not maintainable.

10. Learned counsel for the respondents has rightly taken the plea that counter-claims are to be filed by the defendants and not by the plaintiffs. As per the provisions of Order VIII Rule 6-A CPC, the counter-claims can be filed by the defendants only and admittedly, in the present case, the counter-claim has been filed by the plaintiff and the proposed application for seeking amendment in the counter-claim is legally not permissible. Such a view was taken by Hon`ble Uttarakhand High Court in **Zila Panchayat Parishad Vs. Additional District Judge and others, 2013 (2) U.D. 314.**

11. For the above reasons, there is no illegality in the order dated 2.4.2014 and the present petition stands dismissed being without any merit.

**(SHEKHER DHAWAN)
JUDGE**

February 1st, 2016
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