

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3588 of 2016

Date of Decision: 23.05.2016

Shyam and Another

... Petitioner(s)

Versus

Ram Dhari and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Rajender Singh Malik, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for setting aside the order dated 30.4.2016, passed by learned Civil Judge (Junior Division), Gohana, whereby application under Order 6 Rule 17 CPC, filed by petitioner/plaintiffs for amendment of plaint, was dismissed.

Learned counsel for the petitioners submitted that the proposed amendment was essential for the just decision of the case, but the Court below dismissed the application without any reason and the impugned order be set aside by accepting the present petition.

Having considered the submissions made by learned counsel for the petitioners and gone through the record of the case, this Court is of the

considered view that present petition relates to the matter that plaintiff had filed suit for declaration titled as “Shyam Lal and Others v. Ram Dhari and Others”. However, Nirmala and Kamla were not arrayed as parties to the suit and they were impleaded as such after amendment of Hindu Succession Act, 1956 and the suit of plaintiffs was dismissed as withdrawn as there was compromise between the parties. The amendment was sought on the ground that these facts could not be pleaded while filing plaint in the present suit.

Respondents contested the application on the ground that case is otherwise fixed for final arguments after conclusion of evidence by both the parties. The alleged settlement had taken place in the years 2004 & 2010 and this fact was very well within the knowledge of the petitioner/applicants and were in position to take all these pleas at the time of filing of the suit or at the initial stage of the suit, but that has not been done. On this ground, the Court below dismissed the application.

In the present case, the Court below has rightly taken the view that plaintiffs were fully aware of the facts right from the beginning because the same were pleaded in the written statement, which was filed on 23.11.2011. Thereafter, the trial commenced and both the parties led their respective evidence. The proposed amendment could not be allowed because the said fact was well within the knowledge of the party seeking amendment right from the beginning and the amendment was sought for at the fag end of the trial. The amended provisions of Order 6 Rule 17 CPC read 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 amended provisions of order 6 Rule 17 CPC, the amendment of pleading can be allowed but subject to the condition that amendment can be allowed after the commencement of the case if the party makes out a case that despite due diligence, such an evidence could not be led. But that is not the case before the Court below. Thus, the Court below has rightly dismissed the application being not maintainable.

Accordingly, present petition is without any merit and the same stands dismissed, in *limine*.

(Shekher Dhawan)
Judge

May 23, 2016
“DK”