

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.4003 of 2016 (O&M)
Date of decision:26.08.2016

Nasib Kaur and another

... Petitioners

Vs.

Sukhwinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amaninder Preet, Advocate
for the petitioners.

Mr. T.P.S.Tung, Advocate
for respondent No.1.

Mr. Gaurav Sharma, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

The petitioner-plaintiffs are aggrieved of the impugned order dated 21.03.2016 (Annexure P-6), whereby, an application filed at the behest of defendant No.1 seeking amendment of paragraph 3 of written statement, has been allowed.

Mr. Amaninder Preet, learned counsel appearing on behalf of petitioner-plaintiffs submits that on going through the un-amended paragraph 3 of the written statement, there is a categorical admission *vis-a-vis* Amarjit Kaur having married to Gurdeep Singh and thereafter re-married to Sukhwinder Singh. Such an admission cannot be permitted to be withdrawn in the manner and mode as has been indicated in the impugned order

because valuable right has been accrued in favour of the plaintiffs. The amendment has changed the nature of the defence and therefore, it will certainly prejudice the rights and interest of the plaintiffs. He, thus, urges this Court for setting aside the impugned order.

Mr. T.P.S.Tung, learned counsel appearing on behalf of respondent/defendant No.1 submits that it was a clerical mistake as in case the entire pith and substance of paragraph 3 of the reply, i.e., written statement and replication thereto have to be seen, there is no direct admission. The trial is at the initial stage. In case, the plaintiffs are aggrieved with the amendment, the same can be rebutted by them as they have right to cross-examine the witnesses and thus, urges this Court for affirming the impugned order.

I have heard learned counsel for the parties and appraised the paper book and of the view that the amendment sought is most innocuous. The parameters for allowing the amendment in the written statement are totally different and the Courts are more liberal in allowing the application for amendment in the written statement.

For the sake of brevity, paragraph 3 of the un-amended written statement and amended written statement reads thus:-

Un-amended paragraph 3 of written statement

“3. The contents of para no.3 are correct to the extent so far as late Amarjit Kaur above was married to Gurdeep Singh resident of Thikriwal and Amarjit Kaur was not having any child and Gurdeep Singh had left Amarjit Kaur. Rest of the

contents of paragraph 3 are denied. It is vehemently denied that Amarjit Kaur was keeping her residence at her parental house at village Hamidi. Amarjit Kaur again married with the defendant, which was solemnized in simple manner and through Anand Karaj. After marriage, Amarjit Kaur and answering defendant resided as husband and wife at village Kutba and performed the duties of husband and wife, but from this marriage, no child had born out of wedlock of defendant and Amarjit Kaur. Even the ration card of Amarjit Kaur was prepared with the defendant as wife. The answering defendant and Amarjit Kaur have been participating in the marriages and functions of near and dear relatives as husband and wife. Some of photographs in this regard are also attached with the written statement.”

Amended paragraph 3 of written statement

“The word “correct” mentioned in 4th line of para 3 of reply on merits may be deleted and word 'is denied' be added in place of it AND the word 'again' is to be deleted in 6th line of this para.”

I am of the view that it was not direct admission but it was clerical mistake as the factum of Amarjit Kaur married with Gurdeep Singh had been reflected. I do not need to deal with the matter on merits as the parties would be open to lead evidence in respect of their respective claims. In my view, the costs of ₹1000/- so granted by the trial Court, is too less

which should be ₹5,000/- to be paid to the learned counsel for the petitioners.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by the trial Court in the impugned order allowing the application which cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

It is made clear that nothing observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

(AMIT RAWAL)
JUDGE

August 26, 2016
savita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No