

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5000 of 2015
Date of decision : May 11, 2016

Kanchan Lata

..... Petitioner

Versus

Ashok Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Suman Jain, Advocate
for the petitioner.

Mr. Sunny Saggar, Advocate
for the respondents.

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 petitioner-plaintiff is aggrieved of the dismissal of the application filed under Order 6 Rule 17 CPC for causing amendment in the plaint in a suit seeking declaration that she is joint owner in possession of the suit property on the premise that one of the property in favour of father of the petitioner-plaintiff was erroneously omitted.

Mr. Suman Jain, learned counsel appearing on behalf of petitioner submits that this Court issued notice of motion on 7.8.2015 with a specific direction to the trial court not to close evidence of the petitioner-plaintiff, meaning thereby, that the application had been filed at the stage of plaintiff's evidence.

He further submits that since the order was not available, the evidence was closed after 2/3 days and therefore he is aggrieved of the same.

He further submits that the amendment sought is most innocuous and does not tantamount to altering the nature of the suit and cause of action or withdrawal of admission, much less being barred by law of limitation, thus urges this Court for setting aside the impugned order.

Mr. Sunny Sagar, learned counsel appearing on behalf of the respondents submits that the amendment sought is too late in a day and not in consonance with the amended provisions of Code of Civil Procedure, 1908. The trial court has already observed that plaintiff should not have been in haste in filing the suit rather should have made an enquiry regarding the property of Bal Krishan in case was aggrieved of the right but not in the manner and mode as has been done.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that the amendment sought to be incorporated reads thus:-

“a) That in the head note of the plaint after the words “District Ludhiana” and before the words “and the mutation” the applicant wants to add the following lines:-

“and the plaintiff is joint owner in joint possession to the extent of 1/20 share out of total land measuring 19B-7B comprised in Khewat No. 209/109, Khatauni No.285, Khasra No.678 (6-5), 679 (6-5), 680 (6-17), as per jamabandi for the year 2007-08 situated at village Payal-2, H.B.No.235, Tehsil Payal, District Ludhiana.

b) That in para No.1 of the plaint, the applicant also wants to add the following lines:-

“The said Smt. Kamla Rani was also owner in possession of 1/5 share in the land measuring 19B-7B mentioned in the head note of the plaint.”

c) That in para No.9 of the plaint, the applicant wants to delete the following figures and words:-

“of 3B/1/2B i.e. 1/25 share”

d) That similarly in the prayer clause of the plaint after the words “District Ludhiana” and before the words “and the mutation”, the applicant wants to add the following lines:-

“and the plaintiff is joint owner in joint possession to the extent of 1/20 share out of total land measuring 19B-7B comprised in Khewat No. 209/199, Khatauni No. 285, Khasra No.678 (6-5), 679(6-5), 680(6-17), as per jamabandi for the year 2007-08 situated at village Payal-2, H.B.No.235, Tehsil Payal, District Ludhiana.”

On reading of the amendment, I am of the view that one of the share in the property as mentioned above of Bal Krishan has been left out in the suit aforementioned therefore, the plaintiff may not be confronted at a later stage, in case, she is able to succeed in the suit owing to provisions of Order 2 Rule 2 CPC, even otherwise there is no limitation for claiming right on the basis of title.

The aforementioned amendment does not alter the nature of the suit. The trial court ought not to have dismissed the application as it would help it in adjudicating the lis between the parties.

In view of the aforementioned reasons, the

impugned order is set aside. The application seeking amendment in the plaint is allowed subject to payment of costs of ₹5,000/-. The order closing evidence is also set aside. The respondents-defendants are directed to file amended written statement within two weeks from the date of receipt of certified copy of this order. Thereafter, petitioner shall file replication within one week and thereafter they shall be given one effective opportunity each to lead evidence.

The civil revision petition is allowed.

(AMIT RAWAL)
JUDGE

May 11 , 2016
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