

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 511 of 2016

Date of decision : April 5, 2016

Kirpal Singh and another

..... Petitioners

Versus

Jorawar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B. S. Pathania, Advocate for
Mr. Amit Dhawan, Advocate
for the petitioners.

Mr. Vinay Puri, Advocate for
Mr. D. K. Bhatti, Advocate
for respondent Nos. 1 and 2.

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-plaintiffs are aggrieved of the dismissal of the application filed under Order 6 Rule 17 CPC for incorporating para No.3 after sub para No.3 of the plaint i.e. sub para No.(iv) by way of amendment of plaint on account of fact that the plaintiffs came to know about the alleged Tabdeel Malkiat, allegedly executed by Chanan Kaur in favour of defendant Nos. 1 & 2 in July, 2010, when mother of plaintiffs went to Halqa Patwari to take copy of said Jamabandi of the estate of Chanan Kaur and other facts as explained in the application.

Learned counsel for the petitioners submits that no

doubt that the application was moved at the stage when the suit was listed for plaintiff's evidence. Earlier the suit was filed through guardian Baljit Kaur widow of Baldev Singh as next friend, however she was illiterate and could not explain the facts, therefore Gurmail Singh, the maternal uncle of the petitioners was allowed to pursue the case, as such interest of minors had not been kept intact, therefore the aforementioned amendment is essential and necessary for adjudication of the lis between the parties.

Learned counsel appearing on behalf of respondent Nos. 1 and 2 submits that the plaintiffs have been very callous, as they have already availed more than 10 opportunities for leading evidence, but no evidence has been lead except one witness, therefore the application was moved, which tantamounts to delay the proceedings. Even otherwise, there is no averment in the application that there is compliance of provisions of Order 6 Rule 17 CPC "despite exercise of due diligence".

I have heard learned counsel for the parties, appraised the paper book and of the view that the amendment is essential and necessary to be incorporated and the amendment is illustrative and explanatory in nature. The interest of the minors is to be kept intact as minors would not know the intricacy of law as the previous guardian had no knowledge of facts sought to be incorporated by amendment and only on appointment of subsequent guardian these facts came to their knowledge and accordingly the application was filed.

In view of the aforementioned facts, the amendment

should be allowed. The other party can rebut the same by filing written statement and also answer question in the cross examination.

Accordingly, the impugned order is set aside. The application seeking amendment is allowed. On filing of amended plaint, the respondents-defendants shall file amended written statement within a period of 15 days thereafter and trial court shall grant four-four effective opportunities to the parties and decide the suit as expeditiously as possible. However, this amendment should be subject to payment of costs of ₹5,000/- to be paid to the counsel for the respondents-defendants in the High Court.

Accordingly, revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 5 , 2016
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