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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4950-2014

Date of Decision : May 18th, 2016

Jammu Ram

.... Petitioner

Versus

Kailash Devi

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. R.D.Bawa, Advocate,
for the petitioner.

Mr. Atul Gaur, Advocate,
for Mr. Sumeet Goel, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 16.07.2014 [Annexure P/6] passed by Civil Judge [Junior Division], Kaithal, whereby application filed by the petitioner for amendment of written statement was dismissed.

2. Learned counsel for the petitioner submitted that because of inadvertence and typing mistake, the following material facts as mentioned in application, Annexure P/3, were omitted and the same are required to come on the file so as to clarify the pleadings:-

“2. That the defendant wants to clarify the pleadings by

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amending the written statement on page No. 2 in 3rd line after the words Kehar Singh and before the competent authority :-

“said Bhagwan Dass was the maternal uncle of defendant who executed a valid will dt: 27.6.2003 in favour of defendant and one Santokh Singh S/o Wariam Singh. After the death of said Bhagwan Dass, defendant and Santokh Singh has acquired every interest in the suit property by virtue of Will dated 27.06.2003.

And at page No. 2 in 6th line after the word shop to the and before the word defendant wants to insert the word “Maternal Uncle”.

3. Learned counsel for the petitioner also submitted that the impugned order deserves to be set-aside as in such like cases, amendment of pleadings should be allowed. He placed reliance upon the judgments of Hon`ble Supreme Court in **Prithi Pal Singh and another Vs. Amrik Singh and others**, 2014(1) RCR [Civil] 327; **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others**, 2010 (1) RCR [Civil] 27, **Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.**, 2007 (2) RCR [Civil] 830 and a decision of Co-ordinate Bench this Court in **Baljeet Vs. Ajit Singh and others**, 2014(1) RCR [Civil] 871.

4. Learned counsel for the respondent submitted that the Court below has already considered this fact that the proposed amendment was well within the knowledge of the petitioner and the application for amendment of pleadings was filed at the final stage of the matter where parties had already led their respective evidence and the case was fixed for rebuttal evidence and arguments. The proposed amendment set-up entirely new case as the petitioner wanted to raise the plea of Will by way of proposed amendment which has rightly been declined by the Court below.

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5. Having considered the submissions made by learned counsel for the parties and the view taken by Hon`ble Apex Court and this Court in the authorities relied upon by learned counsel for the petitioner, this Court is of the considered view that facts of the cited cases are entirely distinguishable as in the present case, the amendment of written statement has been sought when both the parties have already led their respective evidence and the case was fixed for rebuttal evidence and arguments.

6. As per amended provisions of Order VI Rule 17 of Code of Civil Procedure, 1908, the amendment can be allowed by the Courts before commencement of the trial. The amended rule of law as incorporated under Order VI Rule 17 CPC is as reproduced hereunder :-

“17. **Amendment of pleadings** - The Court may at any stage of 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.”

7. The above provision makes it ample clear that the amendment of pleadings can be allowed before commencement of the trial. In the present case, the trial had commenced much earlier and thereafter both the parties have already led their respective evidence. The case of the petitioner for allowing amendment of pleadings is also lacking merit because the proposed amendment was well within his knowledge and had there been in exercise of due diligence, such a plea could have been taken before the commencement of the trial. Similar matter was before Hon'ble

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the Apex Court in **J.Samuel and Others v. Gattu Mahesh and Others**

2012(1) RCR (Civil) 903, wherein it was observed as under:-

“12. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court’s discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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.”

8. By way of proposed amendment, the petitioner wants to set-up entirely a new case so as to introduce the Will dated 27.06.2003 which is not permissible. The Court below has rightly dismissed the application of the petitioner observing that the petitioner had filed the application seeking amendment just to fill-up the lacuna, which is legally not permissible.

9. In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 18th, 2016
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