

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5399 of 2015

Date of Decision: 22.04.2016

Umrao Singh (since deceased) through his legal heir
... Petitioner(s)

Versus

Sube Singh
... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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|----|---|------------|
| 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. Jai Vir Yadav, Advocate
for the petitioner(s).

Mr. Chanderhans Yadav, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 24.7.2015, passed by learned Additional Civil Judge (Senior Division), Narnaul, whereby application under Order 6 Rule 17 CPC, filed by the petitioner/defendant, for amendment of the written statement was declined.

Learned counsel for the petitioner submitted that although Umrao Singh was impleaded as defendant but he was not properly

served and as such he was proceeded against *ex parte*. Written statement and counter claim dated 8.6.2011 were filed by Umrao Singh, defendant. Petitioner used to look after him like a son and he had executed a registered release deed dated 9.6.2010 in respect of 26 kanals of land and mutation No. 1081 dated 31.12.2010 was also sanctioned in that respect. However, respondent getting advantage of his illiteracy, got his thumb impression by mis-representation and prepared the forged papers. Petitioner, who was substituted in place of Umrao Singh, originally impleaded as defendant, moved an application under Order 6 Rule 17 CPC seeking amendment of written statement and para No. 28A was sought to be added, which reads as under:-

"28A. That Civil Suit No. 1268 of 1996 titled as "Umrao vs. Kamla etc." decided on 20.10.2005, by Court of Sh. Sanjeev Arya, the then Additional Civil Judge, Senior Division, Narnaul and the judgment and decree passed in Civil Appeal No. 08 of 2005, instituted on 10.11.2005, titled as "Umrao vs. Kamla etc." by the Court of Sh. Rajesh Malhotra, Additional District Judge, Narnaul, secretly as plaintiff No.2 who in the present suit is plaintiff, to that extent facts and findings are wrong, against law and against facts based on fraud and mis-representation, null and void and are liable to set aside, may be set aside and are not binding upon the rights of the defendant-Jaswant."

However, the Court below, while passing the order dated 24.7.2015, dismissed the application mainly on the ground that

petitioner was allowed to be substituted under Order 22 Rule 10 CPC. Petitioner-Jaswant Singh had stepped into the shoes of Umrao Singh and he is not permitted to raise any fresh plea and as such not entitled to raise additional plea. The said order is liable to be set aside.

Learned counsel for the respondent submitted that application was filed after conclusion of plaintiff's evidence and when the case was fixed for defendant's evidence. Umrao Singh was well within his knowledge of all the facts and the petitioner has just stepped into his shoes. More so, if the proposed amendment is allowed, that way start *de novo* trial, which is not permissible at all and prayed that application be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court below has already considered all these facts while passing the order under challenge that at the time of filing of written statement, all these facts were within the knowledge of Umrao Singh, who died when the evidence of plaintiff was recorded. Such a plea had not been taken by Umrao Singh during his life time and the petitioner has stepped into his shoes and he is not permitted to raise any fresh plea. Such a view was taken by Hon'ble Rajasthan High Court in ***Smt. Chandra kala and Others v. Kanak Mal and Others 2003 AIR (Raj) 306*** and also by this Court in ***Durga Dass v. Ram Rakha and Others 1951 AIR (Punjab) 389***.

More so, the provisions of Order 6 Rule 17 CPC reads 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."

The above referred provision makes it ample clear that amendment of pleadings is not permissible after commencement of trial. The only exception is that:

- 1) That despite due diligence, the party could not have raised the matter before the commencement of trial.
- 2) The same may be necessary for the purpose of determining real question of controversy.

However, both the points in the present case are against the petitioner because the application has been filed after commencement of the trial and more so, at the fag end of trial. The proposed amendment was well within the knowledge of Umrao Singh right from the beginning. More so, if the proposed amendment is allowed that shall result into *de novo* trial, which is not permissible as per law. Thus, the Court below has rightly dismissed the application.

In view of above, the Court below has rightly dismissed the application. Thus, the present petition stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

April 22, 2016
"DK"