

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5598 of 2015 (O&M)
Date of decision : April 26, 2016

Sardar Balvinder Singh and others

..... Petitioners

Versus

Sardar Darshan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Chopra, Advocate
for the petitioners.

Mr. R. K. Gupta, 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 are aggrieved of the impugned order dated 20.7.2015 whereby the amendment sought to be incorporated in paragraph (iii), (iv) of paragraph 5 of preliminary objections and para No. 2 on merits of the written statement has been rejected.

Mr. Ashish Chopra, learned counsel appearing on behalf of the petitioner submits that due to inadvertence the averments in paragraph (iii) and (iv) of paragraph 5 of preliminary objections instead of red colour it should have been mentioned as yellow and instead of yellow it should have been mentioned as green and in paragraph 2 instead of yellow it should have been green. In

this context the amendment was sought when the suit was listed for plaintiff's evidence. The plaintiff has not stepped into the witness box. All these factors can be seen at the time of final hearing and plaintiff would have a chance to cross-examine the witness viz-a-viz alleged partition having taken place or not, thus, urges that the impugned order suffers from illegality and perversity.

Mr. R. K. Gupta, learned counsel appearing on behalf of the respondents submits that the petitioners-defendants have given a different tinge and colour to the written statement which is not admissible. The suit was filed in the year 2010 whereas written statement was filed after a gap of one year. During the course of hearing of the suit, respondents-plaintiffs offered for some settlement, it is in these circumstances, the application was moved to thwart the adjudication of the trial, therefore the amendment sought should not be allowed and the order under challenge should be affirmed.

I have heard learned counsel for the parties and appraised the paper book and of the view that the amendment sought in the written statement is most innocuous, illustrative, much less explanatory in nature. Since the plaintiff has yet to step into the witness box, though the plaintiff has filed the affidavit in examination-in-chief but since the amendment has been sought, he shall be at liberty to file a fresh affidavit regarding averments made in the plaint as well as to rebut the same by leading direct and cogent evidence and can also seek examination of defendant's witness at length viz-a-viz partition having taken place or not. The parameters for seeking

amendment of the plaint as compared to written statement are totally different. The court should be more liberal in granting amendment. It does not amount to withdrawal of admission. It is an error which has to be rectified by incorporating correct colour in the site plan attached with the written statement.

The impugned order is set aside. The application seeking amendment of in paragraph (iii), (iv) of paragraph 5 of preliminary objections and para No. 2 on merits of the written statement along with amended site plan is allowed subject to costs of ₹5,000/- to be paid to the counsel for the respondents in the High Court.

The petitioners are at liberty to file the amended written statement and amended site plan within 15 days from the date of receipt of certified copy of this order, thereafter the trial court shall proceed with the trial from the stage at which it was.

The parties are not averse to the situation in case, appropriate direction is issued to the trial court to dispose of the suit by fixing a time frame.

The trial court is directed to give three-three effective opportunities to the parties and thereafter shall decide the suit in accordance with law within a period of ten months from the date of receipt of certified copy of this order.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

April 26, 2016
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