

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.5703 of 2016(O&M)

Date of decision:2.9.2016

Jai Lal

....Petitioner

VERSUS

Mohinder and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Ms. Monisha Lamba, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 23.08.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Gurgaon whereby application filed by the petitioner for amendment of the written statement by invoking Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') has been dismissed.

Counsel for the petitioner has submitted that in the suit for partition and permanent injunction filed by the respondent/plaintiff, the petitioner has been arrayed as defendant No.2 and he filed his written statement contesting claim of the respondent/plaintiff. Due to some typographical and clerical mistake, in the written statement, it was mentioned that the petitioner is owner in possession by way of oral family settlement and adverse possession. The petitioner filed the instant application in order to say that the words 'adverse possession' be read as 'by way of receipts and affidavit'. It is further argued that the petitioner has already adduced his evidence and would not adduce further evidence in case application for amendment is allowed. In addition, it is argued that

the factum of receipt is already pleaded in the written statement, therefore, no prejudice would be caused to the adversary in case the proposed amendment is allowed.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

It is an undisputed position of the case that in the written statement filed by the petitioner, he has controverted plea of the respondent/plaintiff in regard to his being a co-sharer in the suit property and thus entitled to seek its partition by raising a specific plea that he (petitioner) is owner in possession by way of oral family settlement and adverse possession. Concededly, the petitioner has already adduced his evidence. The trial Court has noticed that after framing of issues and closing of evidence of the respondent/plaintiff, more than 13 witnesses were examined by the defendants. Counsel for the petitioner has fairly informed that even in his statement recorded before the Court by way of evidence, the petitioner has reiterated the factum of his being owner in possession by way of oral family settlement and adverse possession, besides deposing other facts in view of written statement. The very fact that the petitioner has already adduced his evidence by reiterating his stand taken in the written statement, it is difficult to accept contention of the petitioner at this belated stage that the words 'adverse possession' in the written statement are the result of typographical or clerical mistake. This fact alone is sufficient to hold that application filed by the petitioner for amendment of the written statement is mala fide and hence cannot be allowed. In view of the above, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

SEPTEMBER 2, 2016	(REKHA MITTAL)
‘D. Gulati’	JUDGE
Whether speaking/reasoned	: yes/no
Whether reportable	: yes/no