

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

CR No.6047 of 2014

Date of decision : 16.03.2016

Vijay Jolly

...Petitioner

Versus

Suman Jolly and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. N.C. Sahni, Advocate for the petitioner.

Mr. Namit Gautam, Advocate for the respondent Nos.1 to 5.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the dismissal of the application seeking amendment of the written statement at the stage when the suit had reached stage for rebuttal arguments.

Mr. N.C. Sahni, learned counsel appearing on behalf of petitioner-defendant submits that amendment was sought in para No.2 to give explanation with regard to the property at the hand of Balwant Singh. Amendment sought to be incorporated in para No.2, reads thus:-

“In fact Sh. Balwant Singh was the owner of the property having an area of 642 sq. yards, comprised in

khasra No.866/259/3, 867/259/3, 866/259/5, 867/269/5, 866/259/2, 867/259/2 bearing property No.26-11 (27) Deepak Nagar, Ludhiana. He has died. He was having four sons and three daughters namely Rajinder Singh, Sant Singh, Manmohan Singh, Kamal Mohan, Pushpa Rani, Sudarshan, Santosh. Sh. Rajinder Singh has died. He was having four sons and a daughter namely Daljit Singh, Mohinder Singh, Baljit Singh Vijay Kumar and Chanchal Rani. Sant Singh has died, leaving behind two daughters namely Anita and Roopa. Sh. Manmohan Singh has died leaving behind two sons namely Munish & Avinash & widow. Kawal Mohan has died. He was not having any legal heir. Pushpa Rani has also died, leaving behind two sons namely Shiv Dutt and Chotu. Sudarshan Bala and Santosh Rani are still alive. Baljit Singh, has died leaving behind his widow Kamala Rani and three daughters namely Monica, Sonica and Rita and sons of Sharanjit. The entire property owned by Balwant Singh having an area of 642 sq. yards was acquired by Improvement Trust, Ludhiana including the portion of the property having an area of 143 sq. yards regarding which the sale deed was executed by Sh. Balwant Singh in favour of Sh. Rajinder Singh. In lieu of acquiring the said entire property having an area of 642 sq. yards, Improvement Trust allotted two properties i.e. one property bearing No.133, Atam Nagar, Ludhiana was allotted to Rajinder Singh in lieu of acquisition of his share in the property having an area of 143 sq. yards and property bearing No.134, Atam Nagar, Ludhiana was allotted to Balwant Singh. Sh. Balwant Singh however applied for exemption of his balance property which was considered by the Improvement Trust, Ludhiana and as such the remaining property having an area of 415 sq. yards was exempted by Improvement Trust,

Ludhiana. On account of exempting the said 415 sq. yards of the property the Improvement Trust, Ludhiana get back the property bearing No.134, Atam Nagar, Ludhiana from Sh. Balwant Singh and he surrendered the said property in favour of Improvement Trust, Ludhiana as such Sh. Balwant Singh was the owner of the property which is now in existence having an area of 415 sq. yards, bearing property No.26-XI(27), Deepak Nagar, Ludhiana which is now in possession of the defendant No.1.”

whereas as per the para No.2 of the written statement, following averments were made:-

“2. That para No.2 of the plaint is wrong and denied. It is denied that Sh. Balwant Singh Grand father of the plaintiff purchased the land measuring 277.1/3 sq. yards through sale deed dated 07.01.1954. It is not denied that the property in dispute is having No.27, Deepak Nagar, Dugri Road, Ludhiana. It is not denied that Sh. Rajinder Singh was the owner of the property having an area of 143 sq. yards. The property bearing No.27, Deepak Nagar, Dugri, Ludhiana does not fall in Khasra No.877/269/877/316, 874/307, 875/307 and 876/316.”

The trial Court dismissed the application on the ground that it tantamounts to withdrawal of the admission whereas it is not so. The parameters for permitting the amendment in the written statement of the plaint is totally different, in essence, Court should be more liberal in the amendment of the written statement. In support of his contention, he has relied upon judgment rendered by Hon'ble Supreme Court in *Abdul Rehman and another Vs. Mohd. Ruldu and others*, 2012(4) RCR (Civil) 481, *Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others*, 2007

(2) *RCR (Civil) 830 and State Bank of Hyderabad Vs. Town Municipal Council, 2007(1) RCR (Civil) 415*, to contend that amendment can be allowed even after trial has commenced if Court comes to conclusion that in spite of due diligence, the party could not have raised the point or aver before the commencement of trial.

Mr. Namit Gautam, learned counsel appearing on behalf of respondent-plaintiff submits that amendment sought to be incorporated tantamounts to the withdrawal of the admission in para No.3, much less, it is destructive and contradictory to the stand taken in the written statement. The averments of the corresponding paragraphs of the plaint in the unamended written statement has been denied. The plea sought to be incorporated in the written statement in the absence of evidence would be immaterial and illusory, much less, not essential and necessary for the adjudication of the lis and sought indulgence of this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of view that there is no merit in the present revision petition. The factum of the amendment sought to be incorporated was in the knowledge of the petitioner-defendant. No explanation has come forth that in spite of “exercise of due diligence”, amendment could not be sought, in essence, there is no statutory compliance of the same. Case law cited at Bar by Mr. Sahni, deals with the situation, where the Court had an occasion to ponder upon the amendment sought by holding that it is essential and necessary for the adjudication of the suit. On juxta-position of the unamended paragraphs, it tantamount to withdrawal of the admission which

cannot be permitted at the final stage of the suit.

No ground for interference is made out.

Dismissed.

16.03.2016

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**(AMIT RAWAL)
JUDGE**