

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6514 of 2015

Date of Decision: May 03, 2016

Shello & others

...Petitioners

Versus

Smt.Sunita

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.B.P.S.Virk, Advocate,
for the petitioners.

Mr.Atul Goyal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiffs are aggrieved of the impugned order, whereby the application seeking amendment of the plaint at the stage when the suit was listed for plaintiffs' evidence, has been declined.

Mr.B.P.S.Virk, learned counsel appearing on behalf of the petitioner-plaintiffs submits that the following amendment has been sought to be incorporated in the plaint:-

“i) That the applicants want to add the words “as the matter was settled with the intervention of respectable and relatives and the parties mutually agreed upon” and before the words “on the basis of agreement/family settlement deed dated 6.12.2007” was written in the first head note of the plaint and in the first prayer clause of the plaint.

ii) That the applicants want to add the words “as the matter

was settled with the intervention of respectable and relatives and the parties mutually agreed upon “and before the words” on the basis of agreement/family settlement” was written in the second head note of the plaint and in the second prayer clause of the plaint.

Iii) That the applicants want to add the words “and the parties mutually agreed upon thereafter” before the word “compromised with the parties” at page no.4 line no.6.”

He submits that the aforementioned amendment does not amount to alter the nature of the case set up in the plaint and the prayer sought earlier in the plaint reads thus:-

“Suit for declaration to the effect that the plaintiffs are owners in possession of land mentioned as under:-

- i) Land measuring 8K-9M out of land measuring 35K-12M i.e. 1/8 share comprised in khewat No.75/78, Khatauni No.93, Rect.No.9, Killa No.12, 19 min, Khatauni No.94, Rect.No.9, Killa No.19 min, 22 min Khatauni No.95, Rect.No.9, Killa No.19, 22 min, Khatauni No.96, Rect.No.9, Killa No.20, 21 and*
- ii) Land measuring 1K-1M out of the land measuring 5K-3M i.e. 28/103 share comprised in khewat no.78/79, khatauni No.97, Rect.No.9, Killa No.11.*

As per jamabandi for the year 2011-12 situated at village Lakhawal Kalan, H.B.No.54, Sub Tehsil Machhiwara, Tehsil Samrala, District Ludhiana on the basis of Agreement/family settlement deed dated 06.12.2007 and mutation no.1477 passed on 01.06.2012 is illegal void and non-est and the

plaintiffs are not bound by the illegal and wrong mutation and having no effect on the legal rights of the plaintiffs and same is liable to be set-aside and cancelled.

And

A decree for permanent injunction restraining the defendant alienating or cause to alienate or selling or cause to sell interfering or cause to interfere into the peaceful possession of the plaintiffs from the land fully mentioned in the head note of the plaint, when the defendant has relinquished her all rights regarding the suit property on the basis of agreement/family settlement so the defendant has no right, title or concern in the suit property in any manner whatsoever.”

He further submits that the respondent-defendant would have a right to cross-examine the witnesses.

Mr.Atul Goyal, learned counsel appearing on behalf of the respondent-defendant submits that attempt is to delay the trial. The aforementioned amendment is not essential and necessary for the adjudication of the matter, much less it cannot be said to be elucidatory and explanatory in nature. In case, the amendment is allowed, it would amount to de novo of the trial and, thus, urges this Court for affirming the impugned order.

I have heard the learned counsel for the parties and appraised the paper book and of the view that on juxtaposition of the un-amended plaint and the amendment sought to be incorporated, the amendment is explanatory and elucidatory in nature and is most innocuous and does not alter the nature of the suit. Though parameters for seeking amendment of the

plaint and written statement are totally different, but the instant case is not of such kind where the amendment does not even delay the trial as the plaintiffs have not furnished any affidavit in examination-in-chief. The respondent-defendant would have a right to file the detailed amended written statement and cross-examine the witnesses. However, amendment sought at this stage of the trial has wasted the time of the Court and, therefore, I intend to impose costs of ₹10,000/- on the petitioners, to be paid to the counsel for the respondent in the High Court.

Accordingly, the impugned order is hereby set-aside and the revision petition allowed.

May 03, 2016
ramesh

(AMIT RAWAL)
JUDGE