

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

**CR No.665 of 2016 (O&M)
Date of decision :02.06.2016**

Mahi Pal and another

..... Petitioners

Versus

Sohan Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.S.S.Dinarpur, Advocate
for the petitioners.

Mr. Sanjeev Kumar Panwar, Advocate
for the respondents.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 05.12.2015 passed by the learned Civil Judge (Jr. Division), Sub-Division Bilaspur, District Yamuna Nagar, vide which the application moved by the petitioner-defendant for amendment of the written statement under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short CPC), has been dismissed.

2. Learned counsel for the petitioners contended that plaintiff-respondent no.1 has filed the suit for declaration claiming herself to be the owner in joint possession of the land in dispute. He contended that the defendant only want to raise the additional ground of defence that property in dispute was ancestral in the hands of Kartara son of Dalmira, the father of the plaintiff-respondent no.1. He contended that the law regarding amendment of written statement is quite liberal. Petitioners-defendants will not lead any fresh evidence on the point of nature of the property, if the amendment is allowed.

3. On the other hand, learned counsel for the respondents contended that the parties have already adduced their evidence. The application filed by petitioners-defendants is highly belated. The proposed amendment will change the nature of the suit. They want to change their stand by making the proposed amendment in the written statement, which will cause prejudice to the rights of the plaintiffs-respondents. Thus, he contended that the application moved by the petitioner has been rightly dismissed by the learned trial Court.

4. I have duly considered the aforesaid contentions.

5. Petitioners-defendants by way of proposed amendment only wants to take the plea in the written statement that the property in dispute was ancestral in the hands of Kartara son of Dalmira, the father of the plaintiff-

respondent no.1. There is no dispute with the proposition of law that in case of amendment of written statement, the Courts are more liberal in allowing the amendment than that of a plaint. It is also settled principle of law that it is not objectionable to allow addition of a new ground of defence or substituting or altering a defence or even taking inconsistent pleas in the written statement, but these type of amendments are not permissible in case of plaint. To support this view, reference can be made to case **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others 2010(1) R.C.R (Civil) 27.**

6. The Hon'ble Supreme Court in case **Surender Kumar Sharma Versus Makhan Singh 2009(4) RCR (Civil) 597** has laid down that belated amendment cannot be refused, if it is found that for deciding the real controversy between the parties, the said amendment is necessary then it can be allowed on payment of costs. In the instant case, the petitioners-defendants only wants to raise the additional defence that the suit property was ancestral property in the hands of Kartara son of Dalmira, the father of the plaintiff-respondent no.1. Learned counsel for the petitioner has stated at bar that if the proposed amendment is allowed, the petitioners-defendants will not lead any fresh evidence with respect to the issue regarding the nature of the suit property.

That shows that there is no intention on the part of the

petitioners-defendants to prolong the proceedings of the case.

The proposed amendment is essential to determine the real question in controversy between the parties. For moving the application at belated stage, the opposite party can be well compensated by way of costs.

7. Thus, keeping in view of my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 05.12.2015 passed by the learned trial Court is hereby set aside. The application moved by the petitioners-defendants for amendment of the written statement is hereby allowed subject to Rs. 10,000/- as costs.

02.06.2016

S.khan

(DARSHAN SINGH)
JUDGE