

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

CR No.6751 of 2016
Date of decision : 06.10.2016

Amar Singh

...Petitioner

Versus

Bhagat Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sunil Garg, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioner-defendant is aggrieved of the impugned order, whereby application seeking amendment of the plaint from the possession to partition, has been allowed.

Mr. Sunil Garg, learned counsel appearing on behalf of petitioner-defendant submits that no doubt the application for amendment was moved at the stage when the suit was slated for plaintiff evidence but the entire nature of the suit, by incorporating the aforementioned amendment, has been changed. The property earlier mentioned was 75-A but now by way of amendment it is 75 and 74 min.

He submits that parameters for amendment of the plaint and the written statement are totally different. Court have to be more strict and wary for the purpose of amendment. There is no compliance of expression

“despite exercise of due diligence” and urges this Court that impugned order is not sustainable in the eyes of law and is liable to be set aside.

I have heard learned counsel for the petitioner-defendant and appraised the paper book and of the view that amendment sought to be incorporated is innocuous as plaintiff was aware of the consequential effect of not incorporating the plea of partition though the petitioner-defendant had taken the plea of family settlement. This fact be always confronted to the respondent-plaintiff in the cross-examination but the amendment sought, in my view is innocuous and is essential and necessary for the adjudication of the suit. Even if there is no compliance of the exercise of due diligence but the fact remains that serious objection be taken regarding maintainability.

As regards the addition of other property, the plaintiff was wise enough to include all the properties as he would have faced the objection of the partial partition.

Mr. Sunil Garg, submits that by substituting plea of possession into partition, suit would not be within a period of limitation, in my view is totally baseless as there is no limitation for seeking partition.

Accordingly, present revision petition upholding impugned order is dismissed.

06.10.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No