

Civil Revision No. 7243 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7243 of 2016

Date of Decision:26.10.2016

Puneet Kumar

---Petitioner

vs.

Keshav Dass and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Anil Kumar Gehlawat, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 30.7.2016 (Annexure P-8) passed by the Civil Judge (Senior Division), Gurgaon, whereby application filed by the contesting respondents (defendant Nos. 3 and 4) for amendment of the written statement, has been allowed.

Counsel for the petitioner contends that the petitioner has filed

a petition under Section 276 of the Indian Succession Act for grant of probate qua registered Will bearing Vasika No. 488 Additional Book 3 Vol. 154 pages 88-89 on 5.1.2001 purported to be executed by Smt. Triveni Devi, grand mother of the petitioner. The contesting respondents filed their written statement (Annexure P-3), contested the will with a plea that the same is false, frivolous, misleading and result of fraud.

On completion of pleadings by the parties, the trial court permitted the parties to adduce evidence and the petitioner has already concluded his evidence. When the case was pending for recording evidence of the contesting respondents, the present application was filed to raise a plea that the property in question is ancestral property, therefore, Smt. Triveni Devi was not competent to execute a Will in regard thereto.

It is vehemently argued that the application filed by the respondents is clearly hit by the proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure (in short "CPC"), therefore, the trial court committed a gross error rather illegality in allowing amendment of the written statement in the proceedings which are otherwise summary in nature. In addition, it is argued that the proposed amendment would

change nature of defence, therefore, a serious prejudice would be caused to the petitioner in case the impugned order is allowed to sustain.

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

No doubt, the legislature with an intent to check delay in civil proceedings introduced proviso to Rule 17 by way of amendment made in the year 2002 but the said proviso came up for consideration before the courts in a large number of cases. Hon'ble the Apex Court, on a detailed consideration of the various judgments on the issue, laid down certain guiding principles for amendment of pleadings in *Revajeetu Builders and Developers vs. Narayanaswamy and sons and others, 2010(1) RCR (Civil)*

27. On a careful reading of the principles culled out by Hon'ble the Supreme Court, it can be safely held that neither commencement of trial nor delay in filing an application for amendment can be made a ground for declining a plea for amendment of the pleadings. Equally settled is that amendment of a written statement stands on a better footing than that of the plaint because amendment of the written statement would not attract the question of limitation.

In the case at hand, the contesting respondents sought to raise an additional plea that the property in question is ancestral property, therefore the deceased was not competent to execute a will. The mere fact that the petitioner has already adduced evidence would not suffice to decline the relief unless he is able to prove that proposed amendment would cause such a prejudice to him for which he cannot be compensated with costs. Keeping in view the above, I do not find any reason to interfere in the discretion exercised by the trial court allowing amendment of the written statement in order to decide the controversy completely and effectively. However, the petitioner would be at liberty to press his claim for leading additional evidence in order to controvert plea of the respondents with regard to suit property being ancestral.

For the foregoing reasons, finding no merit the petition is dismissed in limine. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

26.10.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No