

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Revision No. 7284 of 2015**

**Date of Decision: 29.03.2016**

Dalip Singh and Others

... Petitioner(s)

Versus

Dharam Singh and Others

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

- |    |                                                                       |            |
|----|-----------------------------------------------------------------------|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | <b>Yes</b> |
| 2  | To be referred to reporters or not?                                   |            |
| 3  | Whether the judgment should be reported in the Digest?                | <b>Yes</b> |

Present: Mr. Lokesh Sinhal, Advocate  
for the petitioner(s).

Mr. C.B.Goel, Advocate  
for the respondent(s).

**Shekher Dhawan, J.**

Present petition is challenge to the order dated 13.10.2015, passed by learned Additional District Judge, Gurgaon, whereby application under Order 6 Rule 17 CPC vide which prayer was made that plaintiff be allowed to change the number of *Fard Badar* from No. 906 dated 4.6.2003 to No. 3 dated 4.6.2003 in the plaint was due to typographical mistake, incorrect *Fard Badar* No. 906 was inserted in the plaint instead of No. 3 dated 4.6.2003. Plea was also taken that

amendment is essential for the just decision of the case and the same would not cause prejudice to the opposite party.

Respondent contested the application *inter alia* taking the plea that issue regarding validity of *Farad Badar* No. 3 dated 4.6.2003 has already been decided in Civil Suit No. 267 dated 16.12.2003 titled as "Ishwar Singh v. State of Haryana and Others" vide judgment & decree (Ex.P3 & Ex.P4), respectively. The said suit was dismissed on the ground of jurisdiction. *Farad Badar* No. 3 was declared void. More so, if the proposed amendment is allowed, that would bar the amended suit by the principle of *res judicata* and as such amendment would result into *de novo* trial, which is not permissible as per law. Prayer was made to dismiss the application.

The Court below, while considering the entire controversy, dismissed the application under Order 6 Rule 17 CPC and as such present petition before this Court.

Learned counsel for the petitioner submitted that petitioner is seeking the change of *Farad Badar* from No. 906 dated 4.6.2003 to No. 3 dated 4.6.2003 because inadvertently, in the written statement reference was made to *Farad Badar* No. 906 only. Although, during the course of arguments before the trial Court, plea was taken that it was *Farad Badar* No. 3 and not *Farad Badar* No. 906, wherein shares of the parties have been re-determined. The Court below has not considered this aspect while passing the order under challenge. More so, no evidence is to be led in support of amended pleadings. He prayed that present petition be accepted and the impugned order be set aside.

While arguing on this point, learned counsel for the respondents submitted that original plaint was regarding *Farad Badar* No. 906 and by way of proposed amendment, present petitioners want to change the nature of litigation altogether and the Court below has rightly dismissed the application. Present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that originally, suit was filed with the averment that *Farad Badar* No. 906 dated 4.6.2003 was changed without notice and against the interest of the plaintiffs and the same be declared null and void. The defendants filed written statement and the Court framed issues in respect of legality of *Farad Badar* No. 906 and after leading of evidence by the parties and appreciation thereof, suit was dismissed. Now the petitioners want to amend the nature of litigation altogether that they be allowed to treat *Farad Badar* as No.3 in issue and not No.906. The Court below has rightly taken the view that such an amendment cannot be allowed for more than one reasons because amendment of pleadings at belated stage can be allowed but for that purpose, the same must be essential for the just decision of the case. Secondly, the same should not result into injustice to the other party. The Court below has rightly dismissed the application taking into consideration the fact that earlier Civil Suit No. 267 dated 16.12.2003 was decided on 16.4.2007 by learned Additional Civil Judge (Senior Division), Gurgaon and in that litigation, legality of *Farad Badar* No. 3 was in issue and the same was declared

illegal, null and void. The said finding in respect of legality of *Farad Badar* No. 3 dated 4.6.2003 has already attained finality and the same issue cannot be allowed to be raised by way of amendment of pleadings.

In view of above, there is no illegality in the order dated 13.10.2015, passed by learned Additional District Judge, Gurgaon and present petition stands dismissed being devoid of any merit.

**(Shekher Dhawan)**  
**Judge**

**March 29, 2016**  
"DK"