

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

CR No.7692 of 2016O&M)

Decided on. 16.11.2016.

Gurpal Singh

.....Petitioner

Versus

Charanjit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sardavinder Goyal, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 01.11.2016, passed by the learned Additional Civil Judge (Sr. Division), Payal, whereby the application moved by the petitioner-defendant for amendment of the written statement has been dismissed.

2. Plaintiff-respondents no.1 and 2 filed the suit for declaration that they are owner in joint possession of the suit property on the basis of registered sale deed dated 22.07.1980. They have also challenged the mutation no. 1676 dated 27.08.1980, mutation no. 2024 dated 20.11.1987, mutation no. 4245 dated 20.11.1987 being illegal, null and void. They also sought a decree for permanent injunction restraining the defendants from alienating the suit property in any manner.

3. Learned counsel for the petitioner contended that petitioner-defendant is an old man. He was not having any knowledge with respect to the technicalities of law. He contended that the petitioner was adopted by his paternal uncle Sunder Singh vide

adoption deed dated 02.07.1948. He contended that the said adoption deed only become available to him on 20.06.2016 at the time when he was shifting one brief out of the bundle of the documents. Learned counsel for the petitioner contended that Sunder Singh, the paternal uncle of the petitioner was unmarried and issueless. He has adopted petitioner-Gurpal Singh vide the aforementioned registered adoption deed. Thus, the amendment in the written statement incorporating the facts regarding the said adoption are very essential to determine the real controversy in the suit.

4. He further contended that the learned trial Court has simply dismissed the application on the ground that the inconsistent plea is sought to be raised by way of amendment and the petitioner wants to withdraw the admission. He contended that this cannot be a ground to decline the amendment in the written statement. To support his contentions, he relied upon case **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. 2007(2) R.C.R.(Civil) 830.**

5. He further contended that the proposed amendment in the written statement will not change the nature of the suit and will not result in any prejudice to the plaintiff-respondents no. 1 and 2.

6. I have duly considered the aforesaid contentions.

7. Plaintiff-respondents no.1 and 2 filed the suit for declaration that they are owner in joint possession of the land along with defendants-respondents no.3 and 4 on the basis of the sale deed dated 22.07.1980 executed by Inder Singh in their favour, who had inherited the suit property of his brother Sunder Singh, who had died issueless and unmarried. Now, vide this application, the petitioner-

defendant no.3, who happens to be the father of defendants-respondents no.3 and 4, who were also the beneficiary of the sale deed dated 22.07.1980 wants to amend the written statement by raising the plea that he had succeeded to the properties of Sunder Singh being his adopted son vide adoption deed dated 02.07.1948 and Inder Singh his father was not entitled to succeed to the properties left by Sunder Singh.

8. In the impugned order, learned trial Court has categorically mentioned that in the written statement filed by the petitioner, the sale deed in question has been admitted. But, now by way of this amendment, petitioner wants to totally dislodge the plaintiffs challenging the very authority of Inder Singh, the executant of the sale deed to transfer the suit land in favour of the plaintiffs and defendants -respondents no.3 and 4 on the ground that Inder Singh had no right to succeed the properties left by Sunder Singh, rather he was entitled to succeed the properties left by Sunder Singh being his adopted son.

9. The proposed amendment is definitely inconsistent with the plea raised in the original written statement. The petitioner also wants to withdraw the admissions made by defendants in the written statement in order to totally displace the case of the plaintiff, which will certainly result in serious prejudice to the rights of the plaintiff-respondents no.1 and 2. Even otherwise, the application moved by the petitioner for amendment of the written statement does not seem to be *bona fide*. Petitioner himself had remained Revenue Patwari, so he was an educated person and it is not believable that he had no knowledge with respect to an important event in his life i.e. his adoption by his

paternal uncle. In the reply filed by the plaintiff-respondents no.1 and 2, it has been categorically mentioned that the petitioner has shown himself to be the son of Inder Singh in each and every document i.e. the Voter Identity Card, Ration Card, Adhar Card and revenue record and he has nowhere shown himself to be the adopted son of Sunder Singh. It may be possible that the adoption deed may not be readily available to the petitioner at the time of filing the written statement. But, it is not expected that he was not even remembering this fact that he was adopted by his uncle Sunder Singh.

10. The present suit was filed on 11.07.2009 and issues were framed on 14.10.2010. Plaintiffs have closed their evidence on 10.12.2013 and the case was fixed for evidence of the petitioner-defendants for 07.01.2014. Thereafter, they have availed more than 22 opportunities and then this application for amendment of written statement has been moved. So, the present application has been moved for amendment of the written statement when the trial has already commenced, rather it has reached at very advance stage. The Hon'ble Supreme Court in case **Vidyabai & Ors. Vs. Padmalatha & Anr. 2009(1) R.C.R.(Civil) 763** has laid down as under:-

“7. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

In the instant case, the petitioner has not been able to show that why he could not raise the plea regarding his adoption by his uncle Sunder Singh in the original written statement despite exercise of due diligence. So, the requirement of the proviso to Order 6 Rule 17 CPC are not fulfilled.

11. Case **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors (supra)** relied upon by learned counsel for the petitioner is of no help to him as in that case also the Hon'ble Apex Court has laid down that amendment can be allowed after the trial has commenced if the Court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. But, as already mentioned, there was no reason to prevent the petitioner to mention the factum regarding his adoption by his uncle at the time of filing the written statement and no satisfactory explanation has been given in the application that why these facts could not be mentioned in the original written statement in spite of the due diligence.

12. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

13. Thus, the present revision petition having no merits, is hereby dismissed.

(DARSHAN SINGH)
JUDGE

November 16, 2016

S.khan

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No