

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 7619 of 2014 (O&M)

Date of Decision: 22.04.2016

Lehri Ram and Others

... Petitioner(s)

Versus

Bhagwana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Mani Ram Verma, Advocate
for the petitioner(s).

Mr. Kirpal Singh Ahluwalia, Advocate
for respondents No.1 to 11.

Shekher Dhawan, J.

Present petition is challenge to the order dated 30.10.2014, passed by learned Additional Civil Judge (Senior Division), Fatehabad, whereby application of petitioner/defendants No.1, 23, 33 & 44, for amendment of written statement, was dismissed.

Relevant facts for the purpose of decision of present petition that plaintiffs have filed suit for declaration and defendants filed written statement, thereby denying the plea of partition. Plaintiffs'

evidence had been concluded and the case was fixed for defendants' evidence. By way of proposed amendment, petitioners wanted to amend written statement so as to challenge mutation (Ex.P20). The application was contested on the ground that proposed amendment was not relevant at that time and the same plea was taken just to delay the proceedings of the case when the date fixed was last opportunity for defendants' evidence. The Court below dismissed the application vide impugned order.

Learned counsel for the petitioners submitted that mutation has already been sanctioned and petitioner/defendants wanted to challenge the same, whereas no oral evidence was to be led and only documents are to be tendered. But the Court below did not consider these facts and dismissed the application for amendment of written statement and the impugned order be set aside.

Learned counsel for respondents No.1 to 11 submitted that the petitioners had been moving applications one after the other just to delay the proceedings of the case and when the case was fixed for defendants' evidence and the date fixed was last opportunity, present application for amendment of written statement was filed, whereas the proposed amendment was not relevant as the sanctioning of mutation was prior to the filing of the suit and was well within the knowledge of the petitioners and the Court below rightly dismissed the application and present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the

considered view that specific plea was taken in the plaint with regard to private partition having taken place amongst the co-sharers. The said fact was denied by the defendants in the written statement. The Court below rightly observed that as factum of partition is denied by the defendants, the proposed amendment was not essential at all. More so, as the sanctioning of mutation was well within the knowledge of the petitioners right from the beginning, such a fact should have been pleaded in the written statement only and not at the far end of the trial and after settlement of issues and recording of evidence by the parties.

As per amended provisions of Order 6 Rule 17 CPC, the amendment in the pleadings can be allowed if the proposed amendment is necessary and application for amendment of pleadings is to be filed before the commencement of the trial. The only exception is that when the Court comes to the conclusion that despite due diligence, party could not take this plea before the commencement of the trial.

For ready reference, Order 6 Rule 17 CPC is being reproduced:-

"17. Amendment of Pleadings.-the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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.”

The case of the petitioners does not fall under either of the categories because the observations have rightly been recorded by the Court below that proposed amendment is not essential. Secondly, the trial has already commenced after settlement of the issues and plaintiffs' evidence has already been concluded and the defendants availed sufficient adjournments including the last opportunity to conclude their evidence and at that stage, application for amendment of written statement was filed. It is not the case of the petitioners that despite due diligence, same plea could not have been taken at the initial stage, rather this plea could have been taken when a specific stand was taken by the plaintiffs regarding private partition. The Court below has passed the order keeping in view the above facts. There is absolutely no illegality in the impugned order.

In view of aforesaid observations, present petition stands dismissed being devoid of any merit.

(Shekher Dhawan)
Judge

April 22, 2016
"DK"