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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8902-2015 [O&M]

Date of Decision : January 6th, 2016

Satnam Kaur

.... Petitioner

Versus

Gurmail Kaur and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Dr. Rau P.S.Girwar, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 9.7.2015 [Annexure P/3] passed by Civil Judge, Junior Division, Bathinda whereby, application under Order VI Rule 17 of Code of Civil Procedure for amendment of plaint was dismissed.

2. Relevant facts of case, that plaintiff and defendants are owners in possession of the suit land wherein the plaintiff is having 1/5th share. As per plaintiff, because of some inadvertence, the property which was purchased with the funds of joint family could not be mentioned in the heading of the plaint and thus, the applicant-petitioner wanted to include the said property in the plaint.

3. The application was contested by the defendants-respondents

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No. 1 to 3 on the ground that the property for which the application has been made, is a self-acquired property of the respondent No.1 and the land comprising Khasra No. 917/754/2 min was inherited by respondent no.1 from her parents and the plaintiff was not having any concern with the same as she had inherited the same as separate property.

4. Learned trial Judge after considering the facts and especially in view of the fact that the trial had already commenced and the case was fixed for plaintiff's evidence and even last opportunity for plaintiff's evidence was declared when the application was filed, dismissed the same vide the impugned order. Hence, this revision petition before this Court.

5. Learned counsel for the petitioner mainly submitted that simply because of the fact that the trial has commenced is no ground for dismissal of the application for amendment. According to him, the application for amendment could not be filed at an earlier stage an application seeking interim injunction was pending for consideration before the trial Court. Thereafter, the petitioner had filed a Transfer Application bearing No. CM-422-2015 before the District Judge and the order passed by learned trial Judge is not in accordance with law and the same be set-aside.

6. Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that learned trial Judge has rightly taken into consideration the fact that the application for amendment can be allowed before the commencement of the trial. As per the amended provisions of Order VI Rule 17 CPC, even the application for amendment can be allowed at a belated stage and even at any stage of the case if there are any justifiable grounds to establish that the said application could not be filed at an earlier stage due to certain reasons

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beyond the control of the applicant-petitioner. The applicant-petitioner has not made out any such case. In the absence of assigning any reason to file such an application for amendment of plaint that too at a stage when the plaintiff had already availed several opportunities for adducing his evidence and the trial Court having also declared last opportunity for plaintiff's evidence, the trial Court has rightly dismissed his application. More so, merely saying that despite due diligence, the petitioner could not raise the point earlier, is no ground to accept the application for amendment at any stage of the trial.

7. In view of the above, there are no grounds for setting aside the impugned order dated 9.7.2015 [Annexure P/3] passed by Civil Judge, Junior Division, Bathinda, in exercise of revisional jurisdiction by this Court and the present revision petition stands dismissed *in limine*.

(SHEKHER DHAWAN)
JUDGE

January 6th, 2016
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