

In the High Court of Punjab and Haryana at Chandigarh

CR-1393 of 2017

Date of Decision: 7.11.2017

Makhan Singh

---Petitioner

vs.

Balwant Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sachin Ohri, Advocate
for the petitioner

Mr. Deepak Arora, Advocate
for respondent No. 1

Mr. Sandeep Godara, Advocate for
Mr. Ajay Pal Singh Rehan, Advocate
for respondent No. 2(i)

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 6.1.2017 passed by the Civil Judge (Junior Division), Gurdaspur whereby application filed by the defendants for amendment of the written statement has been dismissed.

Counsel for the petitioner has submitted that respondent No. 1/plaintiff has filed a suit for declaration to the effect that he is entitled to 1/4th share out of suit property, detailed in head note of the plaint with further relief for separate possession by way of partition of his 1/4th share. The defendants filed the written statement and in response to para 1 of the

plaint wherein the respondent/plaintiff has raised the plea that the plaintiff and defendant Nos. 1 to 3 are owners in possession of the suit property, it was averred that the same is a matter of record. It is further submitted that later the defendants made enquiry from Municipal Committee, Dinanagar regarding sale deed if any executed by the committee in favour of their father and it was revealed that no sale deed has been executed. It is argued with vehemence that necessity of amending the written statement accrued on the basis of facts that came to knowledge of the defendants including the petitioner on the basis of enquiry from Municipal Committee, Dinanagar that was made by them subsequent to filing the written statement. It is argued that the proposed amendment is necessary for complete and effective adjudication of the matter in controversy and it will not cause prejudice to the respondent/plaintiff which can not be remedied by costs. In addition, it is argued that scope of amendment of written statement is much larger than that of a plaint. According to counsel, the defendant has the liberty to raise inconsistent and contradictory pleas. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court of India **Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others 2007(2) RCR (Civil) 830**.

Counsel for the contesting respondent/plaintiff has supported the impugned order with the submission that the defendants have no right to resile from their pleadings in the written statement and change nature of defence.

I have heard counsel for the parties, perused the paper book particularly various annexures appended with the petition.

Perusal of the plaint would make it evident that sons of Teja Singh, alleged erstwhile owner of the suit property are litigating with regard to their entitlement to the suit house left behind by Teja Singh. The respondent/plaintiff has claimed 1/4th share in the suit house on the basis of natural succession being one of the class-I heir out of four class-I heirs left behind by the deceased. The plaintiff has set up a domestic arrangement/family partition purported to have taken place on 4.11.1996.

In the written statement initially filed by the defendants, they have not disputed the averments raised in para 1 of the plaint. A party can be allowed to withdraw from admission if there is an explanation for such withdrawal. The defendants in the application in para 6 have raised a specific plea as to why there is need for amendment of the written statement in order to make certain additions in preliminary objection Nos. 5 and 6 as well as para 1 of the written statement. There cannot be any dispute about the settled position in law that amendment can be allowed at any stage of the proceedings unless it results in causing such a prejudice to the other side for which he cannot be compensated with costs. Equally settled is that amendment of the written statement stands at a better footing than that of a plaint. The defendant is entitled to take new defence and also plead inconsistent stand. Even admission in the pleadings can be explained and inconsistent plea can be taken in amended petition after taking a definite stand in the written statement. Taking into consideration the position in law coupled with the explanation submitted by the defendants, I find merit in contention of the petitioner that the trial court seriously erred in rejecting plea of the defendants for amendment of the written statement by holding

that the same will completely change nature of the stand earlier taken by the defendants.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the application filed by the defendants for amendment of the written statement is allowed subject to payment of costs of Rs. 5000/- to the respondent/plaintiff. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

7.11.2017
paramjit

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