

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1635 of 2017 (O&M)
Date of Order: 12.10.2017

Harpreet Singh

..Petitioner

Versus

Mewa Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Chopra, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral)

Defendant is in revision petition against the order dated 06.01.2017, dismissing the application filed by the defendant seeking amendment of the written statement during the pendency of the first appeal.

Learned first appellate Court has dismissed the application on the ground that as per proviso to Order 6 Rule 17 CPC added vide amendment dated 01.07.2002, amendment in the written statement cannot be permitted after the trial has started.

In the present case, suit was instituted on 07.06.2002, i.e., before the date when the amendment was enforced. It has repeatedly been held by the Hon'ble Supreme Court that the amended provisions would not apply to pending suits. Reference can be made to one judgment of the Hon'ble Supreme Court reported as **State Bank of Hyderabad .v Town Municipal Council, 2007(1) Civil Court Cases, 704.**

In the present case, defendant by way of amendment wants to add certain facts, which had come to his notice subsequently. It is pleaded that the defendant and his brother were minor and their grandfather in a

family settlement had agreed to give certain portion of the land to the minor grandsons i.e., defendants. The aforesaid family settlement was duly acknowledge by the grandfather Sarwan Singh in the Civil Court and a decree was passed to that effect in Civil Suit No.531/26.09.1987 on 16.01.1988.

Plaintiff in the present case is uncle of the defendants. Even he was party to the aforesaid litigation and had signed the pleadings. It is pleaded by the defendants that since they were minor, they were not in the knowledge of the aforesaid fact, therefore, this defence was not pleaded in the written statement filed in the Court.

Plaintiff-Mewa Singh, uncle of the defendants, had filed a suit challenging the Will executed by Sarwan Singh, the grandfather of the defendants, dated 05.01.2001 and mutation sanctioned on basis thereof.

It is pleaded that the family settlement, which has been duly acknowledged by the decree passed by the Court, on 16.01.1988 would be very material for the adjudication of the dispute between the parties.

No doubt, in the present case, initially the suit was decreed and thereafter in appeal the matter was remitted back and once again the trial Court had decreed the suit. But in the considered opinion of the Court, the amendment sought to be brought in, which is based upon a judgment and decree passed by the Court, would have material effect on the result of the case.

No doubt the proposed amendment has been sought in the first appeal at a quiet belated stage, however, taking into consideration the facts available on the file and amendment sought for being material to the decision of the case, the amendment is allowed. Facts sought to be pleaded

by way of amendment would go to the root the dispute.

Taking into consideration the aforesaid facts and circumstances, the order under challenge is set aside and the revision petition is allowed.

The defendant is permitted to amend the written statement, subject to payment of costs of Rs.20,000/- payable to the plaintiff.

October 12, 2017
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(ANIL KSHETARPAL)
JUDGE

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