

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

Civil Revision No.2005 of 2017
Date of decision: March 23, 2017

Geeta Kumari

...Petitioner

Versus

Seema and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. G.S. Sirphirkhi, Advocate for the petitioner.

Rajan Gupta, J.

Present revision is directed against the order dated December 02, 2016, passed by the trial court, whereby application U/O 6 Rule 17 CPC filed by the petitioner for amendment of written statement has been rejected.

Learned counsel for the petitioner has assailed the order. He submits that inadvertently, counter claim was left to be mentioned which is necessary for proper adjudication of the case. As per provisions of Order 6 Rule 17 CPC, application for amendment can be allowed at any stage.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears, respondents/plaintiffs filed a suit for possession by partition as well as permanent injunction against the petitioner/defendant regarding the house as detailed in the plaint, and restraining the defendant from raising any construction or alienating the said house.

Defendant/petitioner appeared and filed his written statement on 22.7.2016 controverting the averments made in the plaint. During pendency of suit, defendant filed instant application under Order 6 Rule 17 CPC for amendment of written statement on the ground that due to oversight, counter claim could not be mentioned in the written statement. Trial court has rejected the prayer observing that if the proposed amendment is allowed, it would change nature of the suit. I find no legal infirmity with the order. From a perusal of proposed counter claim mentioned in the instant application, it reveals that defendant wants to seek specific performance of the oral agreement to sell dated 5.2.2006 regarding 2/3rd share underneath land of the house. In the written statement, defendant/petitioner has not made any reference of this oral agreement. Moreover, suit is for partition and defendant by way of counter claim is seeking relief of specific performance of alleged agreement to sell, therefore, if the proposed amendment is allowed to be incorporated in the written statement, it will totally change nature of the suit. I am of the considered view that defendant/petitioner cannot be permitted to amend the pleadings. The revision petition is, thus, without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

March 23, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No