

In the High Court of Punjab and Haryana at Chandigarh

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CR No.2630 of 2016

Date of decision: 24.7.2017

GURBAX KAUR & ANR

.....petitioners

Versus

TIRATH SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Dinesh Nagar , Advocate,
for the petitioners.

Raj Mohan Singh, J.(oral)

Petitioners have assailed the order dated 16.2.2016 passed by Civil Judge (Dr.Divn.), whereby application under Order 6 Rule 17 read with Section 151 CPC filed by the defendant-respondent for amendment of the written statement was allowed.

Plaintiffs-petitioners filed a suit for permanent injunction for restraining the defendant from interfering in the suit property and further from getting any electric connection in any part of the suit land till partition of the joint property. In para No.3 of the plaint, plaintiff pleaded that she along with her husband is a co-owner in exclusive possession of the suit property. In para No.4 of the plaint, factum of parties being co-sharers has been pleaded in the context that other co-sharers

have filed a case for partition in respect of suit land against the plaintiffs and the defendant, which is still pending. In the original written statement filed by the defendant, para No.3 of the plaint was admitted, however, in para Nos. 5 and 6 of the written statement, factum of parties being co-sharers came to be pleaded and in para No.6, defendant specifically pleaded that the plaintiff is not in possession of the suit property. By way of amendment in the written statement, defendant wanted to elaborate the pleadings vis-a-vis para Nos. 3, 5 and 6 and contended that para No.3 of the written statement is not sufficient to project an admission on the part of the defendant, to admit exclusive possession of the plaintiff.

At the stage of allowing or disallowing the amendment, the Court is not obliged to comment upon ultimate merits of the case. It is mandatory on the part of the Court to allow all bonafide amendments which are necessary for just decision of the case. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in a larger interest of the justice. All bonafide amendments are necessary to be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. The criteria laid down in **Usha Balashaheb Swami and Ors. vs. Kiran Appaso**

Swami and Ors., 2007 (2) RCR (Civil) 830 can be seen in the

present context.

It is a settled principle that prayers for amendment of plaint and that of written statement stand on different pedestal. The amendment of written statement is to be liberally construed. Even the defendant can take inconsistent plea in the written statement.

In view of nature of controversy, I am of the view that the prayer for amendment allowed by the trial Court cannot be faulted with any error of jurisdiction. In view of order dated 22.4.2016, respondent has already been proceeded against ex parte. Though there is no error of jurisdiction in view of impugned order dated 16.2.2016, but I am of the view that award of costs to the tune of ₹ 1,000/- is on the lower side.

In view of above, impugned order is modified to the extent that the respondent shall pay additional cost of ₹ 5,000/- to the petitioners. Payment of costs shall be the condition precedent for giving effect to the impugned order. The non payment of costs shall entail in necessary consequences.

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

July 24, 2017
anita

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No