

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3747 of 2017(O&M)

Date of Decision: 11.07.2017

Yadwinder Singh & another

...Petitioners

Vs.

Sarabjit Singh & others

...Respondents

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Swarn Singh Tiwana, Advocate,
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. Once defendant has unequivocally admitted in his written statement that Yadwinder Singh was the biological son of petitioner No.2 Malkit Singh and not disputed the fact that the first application by defendant under Order 6 Rule 17 CPC was filed and allowed with no objection taken as to the parentage of the plaintiff nor was in question or raised; and furthermore when the defendant had an opportunity in that application to raise this issue as well, then it should follow that not having done so, the present application under Order 6 Rule 17 deserves to have been dismissed, especially at the stage it was brought.

2. The trial Court for good and sufficient reasons dismissed the application and declined the prayer for amendment of pleadings with reference to the relevant paragraph in the written statement where lay the material admission of fact, and still the written statement should be allowed to be amended, is to my mind a prayer which is highly belated and an apparent afterthought to improve upon the case and change its nature and to unnecessarily protract the trial when the plaintiffs evidence has been closed by order then the same should not be accepted after the plaintiff's evidence based on the written statement on which the issues were framed has been

3. I may record that by an interim order dated 04.07.2017 passed by Brother Ramendra Jain, J. his Lordship has arrived at the same conclusion when Mr. Tiwana was asked to show law in his favour on the point with regard to the second application at the adjourned date, that is, today. None of which has been shown to Court at the hearing in support of the proposition.

4. Counsel then relies on the decision of the Single Bench of this Court in Krishna Devi v. Bhikha, 1989(1) RLR 483 to show that second application for amendment would lie and another ruling in his aid citing Supreme Court in J. Samuel and others v. Gattu Mahesh and others 2012(2) SCC 300. I have considered both these judgments carefully and find no relevance of them in support of plea on second application which if allowed is likely to change the nature of the suit and lead to a re-trial on a new issue which is not permissible. The rulings are distinguishable on facts. In the first application the learned Civil Judge held that the party applying was not entitled to amendment only on account of the notification dated 15.10.1985 which gave opportunity to seek amendment. Though a liberal view is taken by courts on allowing amendments but then, jurisdiction cannot be exercised unreasonably and has to be in consonance with the nature and stage of the suit and other factors before permission is granted.

5. I, therefore, find no palpable error in the impugned order declining the application and the petition is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

11.07.2017

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Whether speaking/reasoned

Yes

Whether reportable

No