

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.4504 of 2016(O&M)

Date of decision: 30.11.2017

Satpal

.....Petitioner

VERSUS

Ved Parkash and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepak Girotra, Advocate for the petitioner.

Mr. Dinesh Arora, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition directs challenge against order dated 04.05.2016 (Annexure P-5) passed by Civil Judge (Junior Division), Rohtak whereby application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the written statement (Annexure P-3) has been dismissed.

Counsel for the petitioner/defendant would urge that the proposed amendment is nothing but an explanation of the facts already pleaded in para 1 of the written statement on merits, therefore, proposed amendment would neither introduce new facts in defence nor cause prejudice to the other side for which he cannot be compensated with costs. He has reiterated the settled position in law that amendment of written statement stands on a better footing than that of the plaint and can be allowed at any stage of the proceedings.

Counsel representing the respondent/plaintiff has submitted that though the trial Court has not accepted plea of the petitioner for

amendment of the written statement but the order passed by the trial Court cannot be taken as prejudicial to the interest of the petitioner, therefore, the petitioner has unnecessarily approached this Court by filing the instant petition.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

There is no dispute that the petitioner in the written statement originally filed has raised a plea in para 1 on merits that during lifetime of his father, out of house total measuring 87 square yards, portion measuring 58 square yards was given to the answering defendant and remaining area was given to defendant No.2 and the plaintiff was compensated with movables. By way of the proposed amendment, he has sought to add certain facts with regard to family settlement having taken place in the presence of certain persons and an amount of Rs.25,000/- was paid to the plaintiff on the basis of settlement.

The trial Court in the concluding lines of para 5 of the impugned order has held that the defendant is trying to elaborate such family settlement by way of amendment but the pleadings shall contain a statement in precise form regarding material facts on which the party pleadings relies for his defence but not the evidence by which they are to be proved. Further held that the applicant has taken plea of family settlement and explaining the same would not make any difference. Similarly, in para 6 it has been held that explaining such settlement is a matter of evidence and not of pleadings.

In view of the observations made by the trial Court and the apprehension entertained by the petitioner/defendant that in case the impugned order is allowed to sustain as it is, it may create obstacle in his

way to adduce evidence qua the facts sought to be added by way of amendment, may be, by way of explanation of the family settlement, the present petition is disposed of with the observations that as the facts sought to be added by way of amendment are only an explanation of the plea raised in the written statement originally filed, the petitioner/defendant would be at liberty to adduce evidence qua the facts sought to be added by way of amendment without inviting an objection either qua beyond pleadings or on any other count at the instance of the respondent/plaintiff.

With the aforesaid observations, the petition stands disposed in the aforesaid terms.

NOVEMBER 30, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no