

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 5181 of 2017

Date of Decision: September 22, 2017

Parmesh Kumar

..Petitioner

Versus

Smt. Alka Shrivastv and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Munfaid Khan, Advocate
for the petitioner.

REKHA MITTAL, J.

CM-20282-CII-2017

Heard.

Application is allowed as prayed for. Annexure P-6 is taken
on record subject to just exceptions.

Main Case

The present petition directs challenge against order dated
10.07.2017 (Annexure P-5) passed by the Addl. Civil Judge (Sr. Division),
Mewat, whereby application under Order 6 Rule 17 CPC (Annexure P-3)
for amendment of the written statement has been dismissed.

Plaintiff/respondent no.1 has filed a suit for declaration with
consequential relief of permanent injunction in respect of agricultural land
measuring 42 Kanals 11 Marlas situated in Village Bissar Akbarpur, Tehsil

Tauru, District Mewat. The defendants filed the written statement (Annexure P-2) contesting claim of the respondent/plaintiff. The suit was instituted in the year 2009 and on completion of trial it culminated in judgment and decree dated 03.11.2014 passed in favour of the respondent/plaintiff. The judgment and decree passed by the trial Court became subject matter of appeal filed before the District Judge, Mewat. Appellate Court set aside the judgment and decree passed by the trial Court and the matter was remitted to the trial Court for decision afresh after providing an opportunity of adducing evidence by the defendants including petitioner Parmesh Kumar. When the case was pending before the trial Court after remittance by the Court in appeal, instant application for amendment of written statement was filed by the petitioner on the premise that when the applicant engaged a new counsel, he came to know that his previous counsel has filed written statement on his behalf without consulting him and getting the written statement signed. It is further pleaded that perusal of written statement filed by Shri. B.S. Kaushish, Advocate on behalf of the defendants reveals that the essential legal pleas have not been taken and evasive reply was given instead of dealing with each allegation of fact specifically. The written statement was sought to be amended by raising certain legal pleas with regard to jurisdiction of the Court, the plaintiff being estopped from filing the present suit by her own act, conduct, omissions, admissions, acquiescences etc. Further prayer was made to amend para Nos. 3 & 4 of the written statement by raising allegations reproduced in bold letters in para no.2 of the application.

Counsel for the petitioner has submitted that a serious prejudice shall be caused to the petitioner in case he is not allowed to amend the written statement in terms of the application Annexure P-3 and the respondent/plaintiff can well be compensated with cost for delay, if any, attributable to the petitioner. The scope of amendment of written statement stands on a better footing than that of the plaint. By way of the proposed amendment, the petitioner does not intend to introduce any new plea by way of defence but only wants to deal with the allegations raised in the plaint in a specific manner.

I have heard counsel for the petitioner, perused the paper book particularly the various Annexures appended with the petition.

Indisputably, it is not the plea of the petitioner that he did not engage Shri S.B. Kaushish, Advocate who filed written statement on behalf of defendants Parmesh Kumar and Sarbati. As has been noticed hereinbefore, the respondent/plaintiff instituted the suit in November 2009. The respondent/plaintiff examined Daya Ram PW1 and Joginder Singh PW3 besides her testimony as PW2. The defendants including the petitioner were provided number of opportunities to adduce their evidence but they did not lead any evidence and eventually evidence of the defendants was closed by Court order and the suit culminated in the decree dated 03.11.2014 passed in favour of the respondent/plaintiff. So long as the suit remained pending before the trial Court, no such plea was raised by the petitioner that Shri B.S. Kaushish, Advocate filed the written statement without consultation with him. Not only this, the petitioner filed

an appeal against the decree dated 03.11.2014. Counsel for the petitioner, in response to a query by the Court has fairly informed that even no such plea was raised by the petitioner in the grounds of appeal much less filing an application for amendment of the written statement before the appellate Court. Counsel for the petitioner has not made it clear as to at what stage, the petitioner engaged another counsel giving him any such information with regard to defects in the written statement filed by Shri B.S. Kaushish, Advocate. It is also not clear if he filed the appeal against decree dated 03.11.2014 through Shri B.S. Kaushish, Advocate. In the given scenario, if such a plea as has been sought to be raised by the petitioner is allowed to prevail, there may not be a single case where application for amendment of pleadings can be rejected.

In view of the above, I find myself unable to accept submissions of counsel for the petitioner for allowing amendment of the written statement by raising additional legal plea (C) and amendment in para nos.3 & 4 of the written statement. However, by way of legal pleas (A & B) recorded in para no.2 of the application, the petitioner has sought to raise the question of jurisdiction of the Civil Court and the plaintiff being estopped from filing the suit by her own act, conduct, omissions and submissions etc. The question of jurisdiction of the Civil Court is a legal issue, which can be raised even without any specific plea in this regard. Under the circumstances, the petitioner is permitted to raise the legal pleas both in regard to jurisdiction of the Civil Court as well as estoppel, by way of amendment of the written statement.

For the foregoing reasons, the petition is partly allowed. The impugned order is modified to the extent that the petitioner shall be entitled to raise the legal pleas with regard to jurisdiction of the Civil Court as well as estoppel. However, order passed by the trial Court declining prayer of the petitioner for adding legal plea (C) and amendment in paras.3 & 4 of the written statement detailed in application (Annexure P-3) is ordered to be affirmed.

Before parting with this order, it is pertinent to mention that a part of the claim of the petitioner has been allowed without notice to respondent no.1/plaintiff in order to save her from unnecessary inconvenience and expense. However, in case respondent no.1 has any grievance to express, she would be at liberty to file an appropriate application before this Court.

The present petition stands disposed of accordingly.

(REKHA MITTAL)
JUDGE

September 22, 2017

Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No