

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5715-2017 (O&M)

Date of Decision:- 04.10.2017

Salinder Singh

.....Petitioner

Versus

Paramjit Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kushagra Mahajan, Advocate, for the petitioner.

RITU BAHRI, J. (Oral)

Petitioner-plaintiff has come up in revision against the order dated 03.08.2017, passed by learned Civil Judge (Jr. Division), Amritsar, whereby an application under Order 6 Rule 17 CPC, filed by respondent Nos.1 and 5/defendants, has been allowed.

Present petitioner/plaintiff filed the suit for declaration to the effect that the plaintiffs are co-owners in possession of the property as per details given in the plaint (Annexure P-1). Respondent Nos.1 and 5 filed the written statement dated 26.04.2016 (Annexure P-2) thereby taking the plea that Will dated 21.03.1994 executed by Tara Singh in favour of Manjit Kaur. Thereafter, respondent Nos.1 and 5 had moved an application under Order 6 Rule 17 read with Section 151 CPC (Annexure P-3) for amendment of the written statement. It was mentioned in the said application that the Will dated 21.03.1994 was duly admitted as correct in 'Parivarik Salsi-Nama', which was written on 26.11.2006. The present

amendment has been allowed, vide impugned order dated 03.08.2017.

Learned counsel for the petitioner has argued that the amendment will change the nature of the case as the alleged 'Parivarik Salsi-Nama' was never pleaded in the original written statement and attempt was being made by the respondents to fill up the lacunae. Moreover, the entire evidence of the plaintiff has been recorded and even witnesses of defendants have been examined.

Learned counsel has further argued that as per the pedigree Tara Singh died on 04.11.1999 and he had two wives, namely, Beant Kaur and Gurnam Kaur. He executed will dated 21.03.1994 in favour of Manjit Kaur wife of Paramjit Singh son of Gurnam Kaur and in the proposed 'Parivarik Salsi-Nama' dated 26.11.2006 has been admitted by Harjinder Singh (DW-2) son of Beant Kaur. Hence, the defendant had knowledge about the said 'Parivarik Salsi-Nama' when they filed the written statement. Moreover, when the question put to Harjinder Singh, who appeared as DW-2, in his cross-examination, he admitted that Tara Singh has challenged the said compromise and that suit has been dismissed.

Learned counsel for the petitioner has referred to a judgment of the Hon'ble Supreme Court passed in **Ajendraprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** and contends that once the issues were framed and three witnesses have already been examined, the application for amendment in the written statement would cause serious prejudice to the plaintiff.

He has further referred to a judgment of the Hon'ble Supreme

Court passed in case Vidyabai and others Vs. Padmalatha and another, 2009(1) R.C.R. (Civil) 763 whereby the amendment in the written statement cannot be allowed after the trial has commenced and proviso to order 6 Rule 17 CPC has to be followed in a mandatory nature. Further, the Supreme Court has considered the proviso to Order 6 Rule 17 of the CPC which provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

In the present case in paragraph No.4 of the application, the amendment sought to be made in written statement has been reproduced and the same is hereby under: -

“It is submitted that the above registered will dated 21.3.1994 of late Tara Singh son of Mota Singh which was registered at document No.2616 Book No.3 Volume No.270 Page 69 registered on 21.3.1994 was duly admitted as correct in “Parivarik Salisi-Nama’ which was written on 26.11.2006 signed by late Baldev Singh grandfather of present plaintiffs. Paramjit Singh, Sukhwant Kaur, Jaswant Kaur sons of Tara Singh from a second wife Gurnam Kaur and Lakhbir Singh, Arjan Singh and Harjinder Singh (Jinda) son of late Surinder Kaur daughter of Tara Singh from his 1st marriage with Beant Kaur. On reaching to the above Salsi-Nama the parties got dismissed their cases titled Baldev Singh Versus Paramjit Singh and others from the Court of Sh. Sanjay Agnihotri, Civil Judge, Amritsar and Lakhbir Singh and others Versus Baldev Singh and others from the Court of Sh. Varinder Aggarwal, Civil Judge, Amritsar on 29.11.2006 and other rent cases Manjit Kaur Versus Baldev Singh and Tara were also got dismissed under Order 9 Rule 3 CPC after the said Salsi-Nama dated 26.11.2006.”

Learned counsel for the petitioner has produced the certified copy of order dated 29.11.2006 when the suit filed by Baldev Singh Versus Paramjit Singh was dismissed in default and suit filed by Lakhbir

Singh and others Versus Baldev Singh was dismissed in default. Both the suits between legal heirs of Beant Kaur and Gurnam Kaur, who are two wives of late Tara Singh, and the date of dismissal of both the suit is 29.11.2006.

Heard.

Keeping in view that the dispute between close family relations was actually dismissed, the application for amendment has been rightly allowed as the ‘Parivarik Salsi-Nama’ in original was produced by DW2 Harjinder Singh and at the time of filing of written statement the defendants could not have pleaded with respect to the said family settlement. Accordingly, no interference is warranted in the impugned order. Such order, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of revisional jurisdiction of this Court under Article 227 of the Constitution of India, unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition is hereby dismissed as such.

October 04, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No