

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6208-2015 (O&M)

Date of Decision:- 18.09.2017

Ram Parshad through his LRs Manoj and others

.....Petitioners

Versus

Rattan Lal and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. H.N. Mehtani, Advocate, for the petitioner.

Mr. Ajay Jain, Advocate, for the respondents.

RITU BAHRI, J. (Oral)

Petitioner has come in revision against the order dated 22.07.2015 (Annexure P-6), passed by the learned Civil Judge (Jr. Division), Hisar whereby his application under Order 6 Rule 17 CPC for amendment in the written statement has been dismissed.

Plaintiff-respondent No.1 son of late Smt. Lakhpati Devi wife of Shri Suraj Bhan filed a civil suit on 20.03.2010 for separate possession of ½ share by way of partition with respect to the property as detailed in the plaint and the consequential relief of permanent prohibitory injunction restraining the defendants from alienating specific portion of the above-property without partition or exceeding their ½ share.

The partition proceedings pertains to the legal heirs of Smt. Lakhpati Devi wife of Suraj Bhan and Savita wife of Sh. Ram Singh as they had jointly purchased the property, vide registered sale deed No.887 dated 27.08.1957, to the extent $\frac{1}{2}$ share of each. After their death, the plaintiff and performa respondent Nos.8 to 10, 11 and 12 became owner to the extent of $\frac{1}{2}$ share while the legal heirs of Smt. Savita became owner of the other $\frac{1}{2}$ share in the property in dispute.

After filing the plaint (Annexure P-1), the written statement was filed by the present defendants on 25.03.2013 (Annexure P-2). As per the family settlement in the year 1960, Ram Singh husband of Smt. Savita became the absolute owner with respect to the shop in dispute, purchased vide sale deed dated 887 dated 27.08.1957. As per the family settlement, another shop in the name of Suraj Bhan and Ram Singh came to the share of the plaintiff and performa defendants. This shop had been purchased on 13.01.1954 situated in Kath Mandi, Heera Mandi, Hisar but by a bona-fide mistake and lapse of time it was mentioned in the written statement that the said shop was purchased vide sale deed dated 08.01.1947. As a matter of fact, the sale deed dated 08.01.1947 pertained to plot situated in Mohalla Ram Pura, Hisar and there was no settlement about the said property/plot. The family settlement was with respect to the shop purchased on 13.01.1954, situated in Kath Mandi/Heera Mandi, Hisar and in this backdrop, the application for amendment under Section 6 Rule 17 CPC was made, which was dismissed, vide impugned order dated 22.07.2015 (Annexure P-6).

On 19.09.2015, notice of motion was issued and passing of the final order was stayed and thereafter, vide order dated 01.04.2016, the petitioner has sought time to verify whether any sale deed has been produced by the petitioners/defendants in their evidence.

Pursuant to order dated 01.04.2016, the petitioner by way of CM-8275-CII-2016, has placed on record of order dated 07.12.2015 (Annexure P-7) by which an application under Order 18 Rule 17 CPC read with Section 151 CPC for leading additional evidence had been allowed and order dated 14.12.2015 (Annexure P-8) whereby the sale deed dated 13.01.1954 was placed on record as additional evidence.

Learned counsel for the petitioners has argued that once the sale deed had been placed on record in Urdu as well as in Hindi translation vide Annexure P-8, the application for amendment in the written statement could not have been dismissed as the original sale deed has already been placed on record.

After hearing the learned counsel for the parties, going through the record, this Court is of the considered view that the law with respect to amendment in the written statement is more liberal than amendment in the plaint. Even though, the amendment cannot be allowed after the trial has commenced but in the facts of the present case, the application for additional evidence had been allowed, vide order dated 07.12.2015 (Annexure P-7) as the sale deed dated 13.01.1954 would not cause any prejudice to any of the parties and the same has attained finality. The dispute between the parties is with respect to the property owned by Smt. Lakhpati and Savita and with respect to the family

settlement effected in the year 1960. The sale deed would be necessary to return a correct finding on the family settlement. Moreover, keeping in view the above fact, once this document has placed on record as Ex.DZ and Ex.DZ/1, the application for amendment should have been allowed even if it was at the stage of rebuttal evidence.

Therefore, order dated 22.07.2015 (Annexure P-6), passed by learned Civil Judge (Jr. Division), Hisar, is hereby set aside and the application under Order 6 Rule 17 CPC for amendment in the written statement is allowed.

September 18, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No