

In the High Court of Punjab and Haryana at Chandigarh

210

CR No. 7279 of 2013

Date of decision: 24.10.2017

SURJIT SINGH & ORS

.....petitioners

Versus

BALKAR SINGH & ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Vinod Khungar, Advocate,
for the petitioners.

Mr.Kulbhushan Soi, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J (oral)

Petitioners have filed this revision petition against the order dated 7.11.2013 passed by Civil Judge (Sr.Divn.) Ferozepur, vide which application for amendment of the written statement was declined.

Samma Singh had four sons, namely, Sahib Singh, Jarnail Singh, Piara Singh and Makhan Singh. A civil Court decree was suffered by Samma Singh in favour of Nishan Singh (son of Piara Singh), Piara Singh and Makhan Singh. Said decree was challenged by Samma Singh himself. Decree was set aside ex parte for which an application for setting aside the ex parte decree was filed by Nishan Singh, which was also

dismissed by the trial Court. In the meanwhile, RSA No. 495 of 2000 came to be filed by Nishan Singh and others against Samma Singh (deceased) through LRs. The said RSA was disposed of as having become infructuous vide order dated 16.4.2007.

Petitioners have purchased the suit land from Nishan Singh vide sale deed dated 29.5.2003. Samma Singh himself through LRs challenged the sale deed by way of civil suit in question in which an application for amendment of written statement was filed before the trial Court. The trial Court has observed that the only right of Samma Singh for declaring the alienation made by Nishan Singh to be illegal will be determined in the suit and no question of inheritance of the property of Samma Singh is to be determined in the present suit. The case being ten years old is matured for final disposal, therefore, application for amendment of the written statement has been declined.

It is a settled principle of law that the amendment of written statement has to be liberally construed and the same can be allowed even after commencement of trial in view of ratio of law laid down in **M/s Modi Spinning and Weaving Mills Co. Ltd. and another** Vs. **M/s Ladha Ram and Co., 1977 AIR (SC) 680, S. Malla Reddy** Vs. **M/s Future Builders Co-operative Housing Society and others, 2013(2) RCR (Civil) 957** and

Revajeetu Builders & Developers Vs. Narayanswamy & Sons and others, 2010(1) RCR (Civil) 27. Since the past history is sought to be elaborated by way of proposed amendment in the written statement, therefore, the procedural law being handmade cannot be strictly construed so as to deny the parties to espouse the real facts before the Court. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing the complete justice between the parties . All bona fide amendments are to be allowed. First part of Rule 17 CPC gives discretion to the Court, but the second part is imperative and enjoins the Court to allow all necessary amendments. The ratio of law laid down in **Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007 (2) RCR (Civil) 830** can be relied in the aforesaid context.

Having considered the controversy, I am of the view that the impugned order is liable to be set aside.

Accordingly, the present revision petition is allowed. Order dated 7.11.2013 is set aside. Necessary consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

October 24, 2017
anita

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No