

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 7081 of 2017(O&M)

Date of Decision: 06.11.2017

Gurpal Kaur

---Petitioner

versus

Jaswinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.P.Soi, Advocate
for the petitioner

Rekha Mittal, J.

C.M.No. 23525-CII of 2017

Heard.

Allowed as prayed for. Annexures A-1 and A-2 are taken on record subject to just exceptions.

C.R.No. 7081 of 2017

The present petition directs challenge against order dated 4.10.2017 whereby application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code (in short “the Code”) for amendment of the plaint has been dismissed.

Counsel for the petitioner has submitted that Pal Singh performed marriage with the petitioner on 1.3.1987 and the said marriage is not dissolved by any Court of law or by way of custom and the same is still subsisting. Pal Singh never performed marriage with Jaswinder Kaur defendant No. 1. The plaintiff/petitioner filed suit for declaration with

regard to her status as wife of Pal Singh and in the alternative it was claimed that in case Pal Singh is not alive or confined in jail at Moscow then he may be declared as dead having not been heard for the past seven years by those who would naturally have heard of him, had he been alive. The plaintiff claimed her right in several properties, detailed in head note of the plaint being successor-in-interest of Pal Singh and also challenged the judgment and decree passed by the Court of Ms. Jaspreet Kaur, Civil Judge (Junior Division), Jalandhar in case titled “Jaswinder Kaur vs. Tajinder Singh and others” filed by defendant No. 1 against defendant Nos. 2 to 6 regarding the suit property. Later, the instant application was filed seeking amendment of the plaint detailed in sub paras (a) to (h) of para 3 of the application though during the course of hearing, plea for making addition as proposed in para (h) was not pressed.

After reply filed by the respondent/defendant No. 1 and having heard counsel for the parties, the application was dismissed by the trial court primarily on the ground that the petitioner has concluded her evidence on 4.5.2017 and the case is now pending for cross examination of witnesses of the defendants.

Counsel for the petitioner would argue that as in the original suit, the petitioner has already claimed a relief in the alternative to declare that Pal Singh is presumed to be dead having not been heard for a continuous period of more than seven years, no prejudice shall be caused to the contesting defendant in case the petitioner is permitted to amend head note of the plaint by deleting the existing one and replacing the same in the manner incorporated in sub para (b) of para 3 of the application for

amendment. It is further argued that other amendments detailed in sub para (e) to (g) are just consequential. In sub para (d), the amendment is to correct name of the Presiding Officer as Jaspreet Kaur in place of Lovejinder Kaur.

I have heard counsel for the petitioner, perused the paper book particularly the plaint, written statement of defendant No. 1, application for amendment of the plaint, reply thereto and the order impugned.

Counsel for the petitioner, in response to a question as to why the petitioner wanted to amend head note of the plaint as she has already sought a relief in the alternative for declaring Pal Singh presumed to have died as he has not been heard for a period of more than seven years, counsel would inform that the amendment was prayed for to remove the objection raised in preliminary objection No. 3 of the written statement of defendant No. 1. Another submission made by counsel is that as Pal Singh is to be declared as dead, his name is liable to be deleted from array of defendants in order to avoid his service by the court.

The plea of necessity to amend head note of the plaint appears to be highly misconceived and liable to be rejected. Perusal of para 3 of the preliminary objections in the written statement would make it evident that the said objection is raised on the premise that vide judgment and decree dated 16.1.2014 passed by the Court of Ms. Jaspreet Kaur, Civil Judge (Junior Division), Jalandhar in case titled "Jaswinder Kaur vs. Tajinder Singh and others" instituted on 21.10.2009, the Court has already declared that Pal Singh is not heard of for the past seven years and declared him to be dead and thus no fresh declaration can be made with regard to the same

subject matter. It is difficult to comprehend as to how the proposed amendment in head note of the plaint is needed to take care of aforesaid preliminary objection. This fact alone is sufficient to convince this court that plea for amendment of head note of the plaint is not bona fide. In this view of the matter, I find myself unable to accept contention of the petitioner that in case the petitioner is not permitted to amend head note of the plaint, it would cause serious prejudice to her or the proposed amendment in head note, is otherwise necessary for complete and effective adjudication of the matter in controversy.

So far as the plea that deletion of name of Pal Singh is necessary in order to avoid his service in the suit, the said plea is also not tenable for the reason that on completion of service of the defendants and pleadings of the parties, issues were framed by the trial court and the petitioner being the plaintiff was called upon to adduce her evidence. The petitioner has already concluded her evidence and the case is now pending for cross examination of witnesses of the defendants, as noticed by the learned trial court. In this view of the matter, there is no question of any loss or injury to the petitioner in case she is not permitted to delete name of Pal Singh from array of defendants.

The plea with regard to correcting name of the Presiding Officer who passed the judgment and decree dated 16.1.2014, challenged by the petitioner being null and void and not binding upon her rights, name of the Presiding Officer has been correctly recorded in head note of the plaint and this fact has been duly admitted by the contesting defendant by referring to the judgment and decree dated 16.1.2014. In the given circumstances,

correction of name of Presiding Officer is of no consequence.

For the foregoing reasons, the petition fails and is accordingly
dismissed in limine.

No order as to costs.

(Rekha Mittal)
Judge

6.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No