

**103 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

CR No. 8056 of 2016

Date of Decision: 05.07.2017

SUSHILA AND ORS

-PETITIONERS

VS

YOGITA

-RESPONDENT

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Gurinder Pal Singh, Advocate,  
for the petitioners.

Mr. H.P.S. Ishar, Advocate,  
for the respondent.

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**RAJ MOHAN SINGH, J. (ORAL)**

Petitioners have assailed order dated 21.10.2016 passed by Civil Judge (Junior Division), Abohar vide which amendment of the written statement was declined.

Respondent-plaintiff filed a suit for declaration to the effect that she is owner in possession of 1/4<sup>th</sup> share in the land in question. Plaintiff has also challenged the Will as well as consequent transfer by defendant No.1 in favour of defendants No.2 and 3. It has come on record that the plaintiff has already concluded her evidence and even the defendants evidence to the extent of examining two DWs has been concluded.

Learned counsel for the petitioners submitted that factum of succession certificate having been granted in favour of Sushila Devi-petitioner No.1 and death certificate of Sugna Devi are the necessary pleadings to be incorporated in the written statement as these facts have been brought on record in the testimonies of DWs so examined during the trial. The evidentiary value of these documents is to be seen at the time of relevant stage, but necessary pleadings are required to be incorporated as no evidence beyond pleadings would be seen by the Court at the relevant stage.

Learned counsel for the respondent has argued that the proposed amendment is nothing but an attempt to delay the proceedings. The case of the petitioners is stated to be based on falsehood.

Learned counsel by referring to the address of the respondent shown in the proceedings under Section 372 of the Indian Succession Act submitted that crude attempt has been made by petitioner No.1 to obtain succession certificate in her favour by showing wrong address of the respondent and resultantly, exparte succession certificate was granted by Additional Civil Judge (Senior Division), Abohar in favour of petitioner No.1 vide order dated 21.08.2011, against which

necessary proceedings for setting aside the same are pending before the competent Court.

At this stage, this Court is not inclined to comment upon ultimate merits of the proceedings initiated by the parties against each other. The suit is pending at the stage of defendants evidence.

It is mandatory on the part of the Court to allow all bonafide amendments which are necessary for the purpose of determining the real controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All bonafide amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation

mechanism. The criteria for allowing or disallowing the amendment of written statement can be seen from a judgment of the Hon'ble Supreme Court in **Usha Balashaheb Swami & Ors. vs. Kiran Appaso Swami & Ors., 2007(2) RCR (Civil) 830.**

It is a settled proposition of law that a prayer for amendment of plaint and a prayer for amendment of the written statement stand on different pedestal. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable. In a case of amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.

Evidently, the Court is conferred with the powers at any stage of the proceedings to allow amendment in the written statement, if in the opinion of the Court such amendment may be necessary for real determination of issues between the parties. Amendment can be allowed, even after commencement of the trial, if in the opinion of the Court that amendment could not be brought despite due diligence.

Since the defendants are entitled to take inconsistent pleas by way of amendment in the written statement, final outcome of the proceedings arising out of grant of succession certificate would be having its own evidentiary value at the relevant stage. Depositions made by the defendants so far can be read in evidence only if there is a pleading to that effect.

In my considered opinion, petitioners are entitled to amend the written statement by incorporating necessary pleas based on judgment dated 21.10.2016 (even though under challenge in the appropriate proceedings) and death certificate of Sugna Devi.

In view of above, this revision petition is allowed. Let necessary amendment be carried out and thereafter, necessary consequences to follow.

Acceptance of this revision petition is subject to

payment of costs of Rs.25,000/- to be paid to the respondent/plaintiff. Payment of costs shall be the condition precedent for showing indulgence in the aforesaid context by the trial Court.

The trial Court is also directed to make every endeavor to decide the suit as early as possible.

05.07.2017  
*jyoti Y.*

**(RAJ MOHAN SINGH)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No