

Civil Revision No.2281 of 2015

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

Civil Revision No.2281 of 2015

Date of decision: 23.05.2018

Smt. Prasanna Kumari and another

.....Petitioners

versus

Sudesh Kumari and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. S.K. Singla, Advocate, for the petitioners.
Mr. R.D. Bawa, Advocate, and
Mr. Samuel Gill, Advocate, for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, challenge has been laid to order dated 26.02.2015 (Annexure P-8) of the trial Court, whereby application of the petitioners for amendment of their replication was dismissed.

Briefly stated, petitioners-plaintiff filed a suit to declare that blind lane, shown in red colour in the annexed site plan, exclusively belonged to them being co-owners of the surrounding area.

Upon notice, suit was contested by the respondents by filing written statement to which petitioners filed replication. Consequently, issues were framed on 11.10.2012. Plaintiffs after examination of nine witnesses at the fag end, but before closure of their evidence, moved application for amendment of their replication to add word “not” in reply to para 3 of preliminary objections to the written statement.

The trial Court vide impugned order, dismissed the said

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application.

Learned counsel for the petitioners *inter alia* contends that in their plaint and replication, the petitioners had taken a categorical stand that disputed street shown in red colour in the annexed site plan with the plaint, was exclusively used by them and the same does not belong to the Municipal Committee, Moga, but due to typographical mistake in the replication, word “not” could not be mentioned in between the words “does” and “belong” in reply to para 3 of the preliminary objections in written statement filed by respondents-defendant.

On the other hand, learned counsel for the respondents-defendant contends that in para 9 of his affidavit as his examination-in-chief in his affirmative evidence, petitioner No.2 has categorically testified that disputed street vests in the Municipal Committee, Moga. Therefore, amendment in the replication cannot be permitted being against the evidence led by petitioners-plaintiff and if permitted, same shall be meaningless and inconsequential inasmuch as it would not wash away the evidence of the petitioners-plaintiff.

Having given considerable thought to the submissions made by learned counsel for both the sides, this Courts finds that instant petition is completely devoid of any merit for the reasons to follow.

The application for amendment of replication was filed by the petitioners at a very belated stage at the fag end after examining nine witnesses, but before closure of their evidence, after awakening from a great slumber.

In case, the petitioners are allowed to amend their replication, in that eventuality, same would be inconsequential in view of the fact that the affidavits of the petitioners in the shape of their examination-in-chief in

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their evidence in affirmative would stand in their way and would negate the plea, which the petitioners now want to plead in their replication by way of amendment.

For ready reference, para 9 of the affidavit of petitioner No.2 is reproduced hereunder: -

“That the plaintiffs do not claim any right against the municipal committee Moga. The blind lane admittedly vests in the Municipal Committee Moga but the plaintiffs along have the right to use it as it belongs to them.”

In view of the facts of the case, it seems that by way of amendment, petitioners-plaintiff want to grab the public street, not owned by them, inasmuch as it ends in front of the property of the petitioners, detrimental to the public at large, which, in the interest of justice, cannot be permitted. More so, the amendment sought would be contrary to the deposition of the petitioners.

In view of the discussion above, petition fails and the same is hereby dismissed.

May 23, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.