

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

**CR-2571-2016 (O&M)
Date of decision : 3.4.2018**

Amina and another **..... Petitioners**

Versus

Suleman and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate for the petitioners.

Mr. Ashok Kaushik, Advocate for respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 11.3.2016, passed by learned Civil Judge (Junior Division), Hathin vide which an application for amendment of the written statement filed under Order VI Rule 17 of the Code of Civil Procedure 1908 filed by defendants No. 4 and 10 was dismissed.

Heard.

It comes out that a suit for declaration and permanent injunction was filed on 9.9.2013. Written statement was filed on 25.10.2013. It further comes out that thereafter, an application under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 was decided against which an appeal and revision were filed. In this case, issues were framed and the case was at the stage of plaintiff's evidence, when this application for amendment was filed, however, no witness has been examined so far.

In the application, defendants No. 4 and 10 want to amend para No. 2 to 6 and 8 to 10 stating that true facts were not illustrated in the said paras. Applicants were not in possession of the revenue record hence proper and specific averments could not be made. Now they want to make specific averments.

Learned trial Court took a view that in the written statement in paras No. 2 and 3 are matter of record; paras No. 4 and 8 have been denied for want of knowledge and para Nos. 5, 6 and 9 are stated to be not related to defendants No. 4 and 10. Therefore, at this stage, these cannot be allowed to be amended.

First of all, relief sought by the plaintiffs needs to be reproduced to properly appreciate the controversy. The same reads as under: -

“.....A decree for declaration to the effect revenue record regarding suit land mentioned in para no. 1 of the plaint, may kindly be ordered to be corrected in accordance with the jamabandi for the year 1963-1964, 1968-1969 and 1973-1974 after the jamabandi for the year 1973-1974 to date as per shares of co-sharers mentioned in para No. 3 of the plaint and a particular Killa number bearing Rect. No. 137, Killa No. 8/2 (4-0) may also be ordered to be deleted from the jamabandi for the year 1988-1989 upto later jamabandies to date and correct total area to the extent of 87 kanals 9 marlas, may kindly be ordered to be recorded in the revenue record, and subsequent Mutation No. 5101 dated 6.7.1973 regarding inheritance of Feroze Khan son of Sh. Mohra son of Sh. Udai Bhan may also be declared null and void, inoperative and not binding upon the rights of the plaintiffs as well as on the rights of other co-sharers of the suit land mentioned in para no. 1 of the plaint and sale deed in favour of defendant No-4 Smt. Ameena wife of Sh. Deenu and Mutation No. 10370 dated 12.11.2012 which was sanctioned in pursuance of sale deed in favour of

defendant No. 4, may also be declared null and void and inheritance of Sultan in favour of Rasula vide Mutation No. 10359 dated 5.10.2012 and inheritance of Kamruddin in favour of Abdul Hamid vide Mutation No. 10095 dated 25.3.2010, may also be declared null and void and are not binding upon the plaintiffs and upon other co-sharer regarding suit land, and subsequent sale deed bearing Vasika No. 2788 dated 3.10.2012 in favour of Rahisan i.e defendant No. 10 and Mutation no. 10731 may also be declared null and void and sale deed bearing Vasika No. 482 dated 28.5.2010 and Mutation No. 10138 in favour of Smt. Mubina defendant No. 2 may also be declared null and void and mutation No. 9730 dated 28.6.2006 in favour of Smt. Rahila and her sale deed bearing Vasika No. 659 dated 23.5.2006 may also be declared null and void and not binding on the rights of plaintiffs as well as on the rights of the other co-sharers regarding the suit land mentioned in para No. 1 of the plaint, may kindly be passed in favour of plaintiffs and against the defendants with costs of the suit. As a consequential relief thereof, a decree for permanent injunction thereby restraining the defendants from interfering in the peaceful possession of the plaintiffs over the suit land mentioned in para No. 8 of the plaint on the pretext of subsequent wrong revenue record after the jamabandi 1978-1979 and other illegal revenue record as detailed in various paras of the plaint, may also be passed in favour of the plaintiffs and against the defendants.”

Admittedly, in the un-amended written statement, defendants No. 4 and 10 have taken a plea that it was denied that mutation of inheritance of Didkarni was entered and sanctioned in favour of the plaintiffs as alleged. Plaintiffs be put to strict proof about this contention. Paras No. 3 and 4 were denied for want of knowledge; paras No. 5, 6 and 9 have been stated to be not related to defendants No. 4 and 10. In paras No. 8 it was stated to be a matter of record. Now by way of amendment defendants No. 4 and 10 want to give the details and want to deny that the land was owned and possessed by the plaintiffs and was purchased by the ancestors of the plaintiffs e.g., Didkarni vide alleged sale deed and that after the death

of alleged Didkarni, it was mutated in the name of the plaintiffs. The purchase by Didkarni was also sought to be denied and consequential sales claimed by the plaintiffs are sought to be denied. The prayer shows that several sale deeds are sought to be set aside. In this case, none of the witnesses of the plaintiffs have been examined and the case is still at the initial stage. The facts sought to be mentioned by way of amendment could be made out only from the revenue record. Admittedly, after the amendment of the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908, ordinarily its affect could be created with due diligence, the same could not be allowed by way of amendment after the trial has commenced. Whether the trial has commenced, has been interpreted as to when the witnesses of the plaintiffs file their affidavits. In any case, when several sale deeds executed decades ago were sought to be challenged, this Court is of the view that all the necessary facts must be brought to the notice of the Court so as to prevent injustice to any of the parties. By way of amendment only facts are sought to be brought to the notice of the Court and the main stand of defendants No. 4 and 10 remain the same.

Therefore, I am of the view that in the given circumstances, the amendment of the written statement is necessary to do complete justice between the parties., Hence, the impugned order dated 11.3.2016, passed by learned Civil Judge, Junior Division, Hathin is set aside. The proposed amendment is allowed, however, subject to costs of Rs. 10,000/- payable to the plaintiffs.

Revision petition is allowed accordingly.

Since, the main revision petition is allowed, the misc.
application pending, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

3.4.2018
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Whether speaking / reasoned	Yes
Whether Reportable:	No