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

CR-2516-2017 (O&M)

Date of decision : 26.11.2018

Raminder Kaur

... Petitioner

Versus

Kulwant Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajaivir Singh, Advocate
for the petitioner.

Mr. Arun Jain, Senior Advocate with
Mr. Sudhir Paruthi, Advocate
for respondent No.1.

AMIT RAWAL, J.

The petitioner-defendant is aggrieved of the impugned order, whereby the application for amendment of the plaint to incorporate the relief of possession by way of partition of suit property and declaration of judgment and decree dated 04.03.1989 passed in Civil Suit No.608 of 1998, claiming declaratory decree of co-ownership to the extent of half share and correction of the revenue record, has been allowed.

Learned counsel appearing on behalf of appellant-defendant No.2 submitted that the issues in the present case were framed on 15.12.2010 and in view thereof, the plaintiff brought on record the evidence, even filed an application for additional evidence to examine K.L. Dua, an Advocate, in Civil Suit No.608 of 1998, in which, the defendant had filed written statement. The said application was dismissed and the

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same was assailed in this Court vide CR No.5625 of 2013, but vide order dated 03.08.2016, the revision petition was dismissed. Thereafter, respondent-plaintiff had been taking number of adjournments for production of rebuttal evidence, in this regard, drew the attention of this Court to the various zimini orders extracted in the ground of revision petition. However, after tendering the rebuttal evidence, on 20.03.2017, filed an application for amendment to incorporate the relief, as noticed above. The said application was opposed by filing the reply on the next date of hearing and the matter was posted for consideration on 22.03.2017. The impugned order is not sustainable as the expression 'due diligence' as indicated in the Order 6 Rule 17 has not been duly complied with. Such relief was available to the petitioner, therefore, it would be hit by the provisions of Rule 2 Order 2 of CPC as well. Nature of the suit has completely been changed from the declaration and permanent injunction to partition as the provisions of Order 20 Rule 18 of CPC would come into play. The application was highly belated and in such circumstances, imposition of costs was not a necessary corollary.

On the other hand, Mr. Arun Jain, learned Senior Counsel assisted by Mr. Sudhir Paruthi, learned counsel appearing on behalf of the respondent No.1 supported the impugned order by contending that after paragraph 5(b) and before paragraph 6, 5(c), 5(d), 5(e) and 5(f) and first para in prayer clause is essential and necessary including the heat-note as well. The cause of action to move an application for amendment arose, when the petitioner-plaintiff acquired the knowledge of decree passed in Civil Suit 608 of 1998. In fact, the plaintiff was never served in the aforementioned suit nor had any knowledge, therefore, question of written

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statement did not arise. Even the decree obtained was a forgery and fabricated document as it would have a serious effect, for, in the absence of Will, the status of the plaintiff would be of a co-sharer, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and there is no force and merit in the submissions of Mr. Ajavir Singh, for, the relief sought to be incorporated by amendment is nothing, but explanation of the relief sought in the pending suit. In the un-amended suit, the plaintiff had claimed to be co-owner to the extent of half share by challenging the mutation on the basis of inheritance. Claiming of partition, in my view, is a correct decision, for, simpliciter declaratory decree according the share would not help the plaintiff as the partition was inevitable. There is no limitation for challenging the decree on fraud, but the defendant cannot be prevented to take the plea of limitation. Technicality of law should not come in advancement of justice. This is what has been held by the Court below as the amendment has been allowed subject to the payment of costs of ₹15,000/-.

Keeping in view the aforementioned fact, the impugned order cannot be said to be without jurisdiction or suffered from any illegality and perversity.

Resultantly, the present revision petition stands dismissed.

26.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**