

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3310-2018 (O&M)

DATE OF DECISION: OCTOBER 3, 2018

KEDAR SINGH

...PETITIONER

VERSUS

BIRENDER SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

PRESENT: MR. MUKESH YADAV, ADVOCATE FOR THE PETITIONER.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner challenges the order of the learned trial Court (Civil Judge, Jr. Divn., Mahendergarh), dated 21.2.2018, by which his application filed under Order 6 Rule 17, read with Section 151 Code of Civil Procedure, has been dismissed.

The said application was filed at the time when, admittedly, the suit was at the stage of evidence being led for the defendants, the petitioner being defendant no.1.

The amendment sought by the petitioner-defendant was that the suit property was actually co-parcenary property, which fact had “inadvertently” not been stated in the written statement filed by him.

The learned trial Court having issued notice in the application and having considered the opposing arguments came to the conclusion that the plaintiffs' evidence having already been closed and the defendants (including the petitioner as defendant No.1) having already availed of 3

effective opportunities for leading their evidence the application was dismissed.

Vide an order dated May 18, 2018, this Court (co-ordinate Bench) had directed the petitioner to place on record any documents in support of his assertion that the suit property is co-parcenary property. Pursuant to the said order, CM-21101-CII-2018 has been filed seeking to place on record a copy of the entry in the mutation register concerned, with learned counsel submitting that the owner of the suit properties is shown to be Nanad, who is the grandfather of the present petitioner (the petitioner being the son of Dariya Singh son of Nanad). In that context he also draws attention to the pedigree table shown at the end of the copy of the mutation register.

Upon query to leaned counsel as to whether the agreement entered into by the father of the petitioner with the respondent-plaintiffs was in excess of his share of the said property, he expresses ignorance on the same also, with no arguments addressed even in terms of Section 30 of the Hindu Succession Act, 1956.

That being so, with absolutely no comment made on the merits of the case for or against the petitioner, but with the application for amendment seeking to place on record certain documents at a stage when the trial had obviously commenced and was at the stage of the petitioner-defendant leading his evidence, I see no reason to interfere with the impugned order, in view of what is stipulated in the proviso to Order 6 Rule 17 CPC, with the factum of the property being co-parcenary property

obviously being otherwise within the knowledge of the petitioner even at the time when the written statement was filed.

Consequently, this petition is dismissed in *limine*.

October 3, 2018
Gulati

(AMOL RATTAN SINGH)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes