

In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.4153 of 2014

.....

Date of decision:21.5.2018

Banwari

.....Petitioner

v.

Subhash and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Aakash Singla, Advocate for the petitioner.

Mr. R.S. Mamli, Advocate for the respondents.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 5.4.2014 (Annexure-P.5) passed by the learned Civil Judge (Junior Division), Fatehabad, whereby an application filed by defendant No.1-present petitioner for amendment of written statement (Annexure-P.3), has wrongly and illegally been dismissed on totally unsustainable grounds and with further prayer to allow the amendment application (Annexure-P.3).

Notice of motion was issued in this case.

Mr. R.S. Mamli, learned Advocate has put in appearance on behalf of the respondents and contested this civil revision petition.

From the record, I find that Subhash-plaintiff filed suit against

Banwari, Rohtash, Inder, Jagdish, Makhan, Krishan and Rai Sahab-
defendants for declaration to the effect that the plaintiff is in cultivating
possession of land measuring 23 Kanals 7 Marlas, as fully described in the
head note of the civil suit, as co-sharer since long and the Girdawri entries
in the name of defendants are wrong, illegal and baseless and are liable to
be corrected in favour of the plaintiff. It has been further prayed that if the
plaintiff for some reason fails to prove his possession over the above
mentioned land then the suit be treated for possession on the basis of title.

During the pendency of the suit, an application for amendment
of written statement was filed and it has been pleaded by the applicant-
defendant No.1 that during the pendency of the present suit he had
purchased land measuring 5 Kanals 5 Marlas which is 105/9307 share in
total land measuring 465 Kanals 7 Marlas comprised in Khasra No.147 as
per Jamabandi for the year 2010-11 vide sale deed No.2319 dated
17.12.2013 and as such he has become co-owner in the suit land. He has
further pleaded that as he has become co-owner in the suit land, present suit
for possession against him is not maintainable and plaintiff can seek
possession against him only by filing suit for partition. He has further
pleaded that defendants No.2 to 7 had compromised the matter with the
plaintiff and as such they have no dispute with the plaintiff. Therefore, he
prayed that he be allowed to amend his written statement in the manner as
described in the bottom of paragraph No.2 of the application.

On the other hand, the plaintiff contested this application on the
ground that it has been filed belatedly as the present suit is at the stage of
evidence of defendants. He also pleaded that in his earlier written statement

defendant No.1 had taken the plea of adverse possession over the suit land and now, by way of proposed amendment he wants to plead that he has become co-owner in the suit land and this proposed amendment is mutually destructive of his already taken plea of adverse possession. He further submitted that his plea that the plaintiff had compromised the suit with defendants No.2 to 7 is not supported by any documentary evidence. It has also been submitted by him that the proposed amendment is not necessary.

The learned Civil Judge (Junior Division), Fatehabad, vide impugned order dated 5.4.2014 dismissed the application.

I have gone through the impugned order. In para 4 of the impugned order, the Court below itself has written that the Court may allow amendments to take notice of subsequent events. The purchasing of the property from other co-sharers measuring 5 Kanals 5 Marlas out of the suit land is a subsequent event. Therefore, defendant No.1 can ask for the amendment of the written statement to avoid multiplicity of the litigation and to get decided the rights of the parties fully and finally. Secondly, in no way, it can be held that defendant No.1 has not acted with due diligence. The sale deed was executed on 17.12.2013 and he filed the application on 23.12.2013 i.e. within six days.

As regards the fact of purchasing the property, it is to be decided by the learned Civil Judge (Junior Division), Fatehabad, after the parties will lead evidence at the time of final disposal of the suit.

As regards the fact that he has taken contradictory pleas, from the perusal of the record, it is clear that earlier defendant No.1 has taken the plea that they are in possession over the suit land on the basis of exchange

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and now alternative plea of adverse possession has been taken. Now during the pendency of the suit, defendant No.1 has purchased 5 Kanals 5 Marlas land and he wanted to get the written statement amended to add this plea also. In the interest of justice and to decide the case substantially between the parties and as due diligence has been on the part of defendant No.1 and he has filed the application without any delay and further it being a subsequent event regarding purchase of the property, I find merit in the application and same is allowed.

Therefore, finding merit in the present civil revision petition, the same is allowed and the impugned order dated 5.4.2014 passed by the learned Civil Judge (Junior Division), Fatehabad, is set aside.

May 21, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No