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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4560-2015 (O&M)
Date of decision : 24.01.2018

Puran Chand
through Special Power of Attorney holder

..... Petitioner

Versus

Hari Chand

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Shri Lalit Kumar, Special Power of Attorney in person.

Mr. Sandeep Punchhi, Advocate for respondent.

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 10.7.2015 passed by learned Civil Judge (Junior Division) Sirsa (Annexure P-4) vide which two applications filed by plaintiff-petitioner under Order 6 Rule 17 CPC, dated 13.1.2015 (Annexure P-2) and 21.3.2015 (Annexure P-3) were dismissed with cost of ₹ 3000/-, to be deposited in District Legal Services Authority, Sirsa.

The short facts, required to be narrated, for the purpose of disposal of the present revision petition, are that plaintiff- Puran Chand, who is stated to be mentally challenged, filed the suit through his guardian-wife Smt. Parvati Devi for declaration, challenging the judgment and decree dated 27.7.2009 passed by the then learned Additional Civil Judge (Senior Division), Sirsa. He further seeks the declaration that he is the owner in possession of the suit property. The suit was filed on 25.5.2012. It appears that after the filing of the suit, the pleadings were completed and issues

were framed. Thereafter, large number of adjournments, numbering about 12, were afforded to the plaintiff to conclude his evidence. When he was directed to conclude his evidence, these two applications dated 13.1.2015 and 21.3.2015 were filed.

Learned trial Court has taken the view that the amendments are neither relevant nor related to the real questions involved in controversy. It was further observed that the amendments are sought only to delay the disposal of the suit.

I have heard the special power of attorney namely-Lalit Kumar and learned counsel for respondent as well.

A perusal of the file shows that suit was instituted on 25.5.2012. The ground of fraud etc., on which the judgment and decree has been challenged were mentioned.

It comes out from the impugned order dated 10.7.2015 passed by learned Civil Judge (Junior Division) Sirsa (Annexure P-4) that plaintiff has already examined five witnesses. Large number of opportunities numbering 12 were afforded to the plaintiff and when last opportunity was given to conclude his evidence, he filed two applications *first* on 13.1.2015 and *second* on 21.3.2015 through his Special Power of Attorney-Shri Lalit Kumar for these amendments.

I have also gone through both the applications. Through the, *first application*, plaintiff-petitioner wants to make amendment almost in all the paragraphs, stating one or the other facts, to support the averments earlier made. Through in the *second application*, certain words are sought to be added.

I am of the view that even if the amendment is not made, the facts stating the real controversy have already been stated in the plaint, the addition of one or the other word will also not make any difference.

In this case, trial has already commenced. The facts stated in the amendment applications were already within the knowledge of the petitioner. The Special Power of Attorney- Shri Lalit Kumar has stated that Smt. Parvati Devi-guardian/wife of plaintiff is an illiterate lady and that the counsel did not guide her properly. In this process, she has to change three counsel, therefore, it is sought to be projected that it was due to fault of the counsel that said facts were not mentioned in the plaint.

I am of the view that illiteracy itself is no ground to allow the amendment at the later stage of the case. So far as drafting is concerned, it is an art of an individual. One may draft the plaint in a particular way, giving certain facts and other may draft in the other way. However, the facts remain that all the facts necessary to challenge the said judgement and decree have been mentioned. Therefore, the blame cannot be put on the counsel though the plaintiff is always at liberty to engage the counsel of his choice and change the counsel.

It being so, there is no illegality and infirmity in the order 10.7.2015 passed by learned Civil Judge (Junior Division) Sirsa (Annexure P-4).

Consequently, present petition is dismissed.

(KULDIP SINGH)
JUDGE

24.01.2018
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No