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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4718-2017 (O&M)

Date of decision : 27.04.2018

Santosh Devi

... Petitioner(s)

Versus

Birender Singh Yadav and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No.1.

Mr. Adarsh Jain, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

CM-18796-CII-2017

Zimini orders filed along with the application are taken on record, subject to all just exceptions.

CM stands disposed of.

CR-4718-2015

The present revision petition is directed against the impugned order, whereby the application for amendment of the plaint at the stage of plaintiff's evidence has been dismissed.

Mr. Akshay Jindal, learned counsel for the petitioner submitted that the suit for declaration with consequential relief of permanent injunction was filed in the year 2009, challenging the Will of Vijay Singh dated 01.09.2008, who died on 31.05.2009. Though in the suit, it was mentioned that the plaintiff is the owner in possession of the suit property,

but defendant No.1 had an evil eye. During the stage of evidence, it was disclosed by the plaintiff that it was defendant No.4, who had been put into possession as the beneficiary of the Will i.e. defendant No.1 had sold the property to defendant No.4, even the defendant in the written statement had also alleged that the possession was with them. A cause of action arose to move an application under Order 6 Rule 17 dated 21.01.2017 for incorporating the following amendment:-

"Suit for declaration with consequential relief of permanent injunction and in the alternative for possession.

In the alternative if the Hon'ble Court comes to the conclusion that the plaintiff is not in possession of the suit property then a decree for possession may kindly be passed in favour of plaintiff and against the defendants No.1 and 4 directing them to hand over the actual, physical and vacant possession of the suit property fully detailed in para No.1 of the plaint."

The aforementioned application has erroneously been dismissed, thus, by submitting that no harm and prejudice would be caused to the respondents-defendants in case the application seeking amendment of the plaint is allowed as the prayer sought in the suit is alternative and in case of succession of the suit, the plaintiff was required to file fresh suit and it would lead to multiplicity of litigation.

Mr. Amit Jain and Mr. Adarsh Jain, learned counsel for the respondent Nos.1 and 4, respectively submitted that the aforesaid amendment was most belated, for, the written statement was filed on 20.06.2009, wherein, it was disclosed that the possessions was with the defendants. No such steps have been taken for causing amendment in the plaint. It is only the month of February 2017, when the application was

moved. In support of their contentions, they relied the judgment rendered by Hon'ble Supreme Court in "Mst Rukhmabai V/s Lala Laxminarayan and others" 1960 AIR (SC) 335, to contend that in case, the amendment application is moved at belated stage, the same is liable to be rejected, for, the factum of the possession in the present case was in the knowledge of the plaintiff, thus, urged this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Jindal. The issues in the present case were framed on 03.01.2015. During all this period, the suit was pending for miscellaneous purpose. It is only in the evidence, the plaintiff came to know that the possession was with the defendants, for, it was sold by the beneficiary to defendant No.4. In such type of cases, where the Will of a deceased father has been challenged by arraying the subsequent vendee as a party, the situation may arise for claiming the possession. The prayer sought to be incorporated is alternative, which would prevent the plaintiff in case of succession of the suit to file fresh suit, in other words, it would save from multiplicity of the litigation. The defendant can always raise the pleas as all the amended paragraphs can be rebutted by filing the amended written statement.

There is no dispute to the *ratio decidendi* culled out in the judgment cited supra, but the facts and circumstances of the each case have to be seen. In the aforementioned case, the suit was filed by the Members of the Society and the amendment was moved for the purpose of delaying the adjudication of the suit, but here in this case, it is only alternative prayer where no harm and prejudice would be caused to either of the parties to the *lis*, in case such amendment is allowed, for, the issues had only been framed

in the year 2015. This aspect has not been taken care by the Court below, therefore, there is illegality and infirmity in the impugned order and the same is hereby set aside being no sustainable in the eyes of law.

Since the petitioner had been not diligent in moving the application with promptitude, I deem it appropriate to impose costs of ₹20,000/- to be shared by counsel representing respondent/defendant Nos.1 and 4 for such delay, which shall be condition precedent.

The application seeking amendment is allowed and the petitioner is directed to file the amended plaint within a period of two weeks from the date of the receipt of the certified copy of this order and amended written statement or replication, if any, be filed within two weeks thereafter. The trial Court shall proceed further with matter.

It has been brought to the notice of this Court that the evidence of the defendants is also over. They can be permitted to lead evidence qua the amended plaint, in case any necessity arises.

Resultantly, the present revision petition stands allowed.

27.04.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**