

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CR-5742-2015 (O&M)

Date of Decision:11.01.2018

Vijay Kumar

.....Petitioner

Versus

Shankar Dass

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Jangvir Singh Hooda, Advocate,
for the petitioner.

Mr. Tanmoy Gupta, Advocate,
for the respondent.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 13.07.2015 passed by the learned Additional Civil Judge, Senior Division, Palwal, whereby application filed by him under Order 6 Rule 17 of the Code of Civil Procedure (for short “the CPC”) seeking amendment in the written statement was dismissed.

Learned counsel for the petitioner has argued that the petitioner has filed the written statement and in paragraph 7 of the preliminary objections, petitioner-defendant has pleaded that he is owner in possession of the property since the time of his ancestors, without any interference in any manner i.e., from more than last 30 years. But as the factum of sale-deed dated 03.02.1976 in favour of his father Pokhar Dass was not in his

knowledge earlier, therefore, the petitioner has moved an application under

Order 6 Rule 17 CPC for amendment in the written statement. Learned counsel for the petitioner has further argued that in case amendment is allowed, no prejudice of any kind whatsoever, is going to be caused to the respondent-plaintiff. Therefore, the amendment sought for, deserves to be allowed.

On the other hand, learned counsel for the respondent-plaintiff has argued that in paragraph 7 of the written statement, petitioner though has claimed himself to be owner in possession of the property for the last more than 30 years, but in the same paragraph, he has pleaded that he is absolute owner in possession of the suit property by way of adverse possession and therefore, through the application seeking amendment in the written statement, a new ground has been set-up by the petitioner. Even otherwise, if amendment in the written statement is allowed, it would unnecessarily delay the proceedings.

I have heard learned counsel for the parties.

No doubt in the written statement submitted by the petitioner, he has pleaded that he is owner and in possession of the property since the time of his ancestors and without any interference from any manner and he has become absolute owner in possession of the suit property by way of adverse possession. But as the pleaded case of the petitioner is that the factum of the execution of the sale-deed regarding the property in dispute was not in his knowledge and the suit property was purchased by his father Pokhar Dass vide sale-deed dated 03.02.1976, therefore, necessity of the amendment in the written statement arisen. Since the amendment if allowed is not going to change the nature of the relief or the nature of the suit property, in any manner, this Court finds that the present revision petition

deserves to be allowed and the amendment sought for, is permitted to be filed by the petitioner.

In the light of aforesaid reasons, the instant revision petition is accepted. Consequently, the impugned order dated 13.07.2015 is hereby set aside. The petitioner shall file an amended written statement within a period of 15 days from today if not filed, subject to the payment of ₹15,000/- as costs to be paid by him to the respondent-plaintiff. However, he would be allowed to amend the written statement only to the extent of the paragraph submitted in the amendment application.

January 11, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No