

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.5540 of 2018

Date of Decision : 09.10.2018.

Bhupinder Singh and others

...Petitioners

versus

Amrik Singh

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Vijay Lath, Advocate for the petitioners.

Mr. Jaideep Verma, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 02.08.2018, passed by the learned Civil Judge (Junior Division), Rupnagar, dismissing the application for amendment of the written statement.

2. Brief facts of the case leading to the filing of the instant revision petition are that the respondent-plaintiff filed a suit for possession by way of partition of share of the respondent-plaintiff to the extent of 1/3rd share from the suit property being Kh/Kh. No.420/373min / 525, khasra No.16//17/2 (1-0) situated in village Bari Haveli, H.B. No.45, Tehsil and District Rupnagar with consequential relief of permanent injunction restraining the petitioners-defendants from raising any type of construction beyond their share and also upon the valuable portion without getting partition.

3. Suit of the respondent-plaintiff was contested by the petitioners-defendants by filing a written statement alleging that a family partition had taken place in April 2011, between the parties and respective co-sharers had been allotted different parcels of joint property and since then each and every co-sharer was enjoying the portion falling to him. On the basis of pleadings of the parties, issues were framed on 18.11.2016. Besides, additional issue No.3-A was framed on 03.07.2017. The petitioners-defendants availed 13 effective opportunities for leading evidence and when the case was at the fag end, application was moved under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'CPC') for amendment of the written statement on the ground that due to typographical mistake in paragraph No.1 of the preliminary objections of the written statement in the third last line word 'April 2011' had been wrongly typed instead of word '13.04.1980', the case was at preliminary stage and no loss would be caused to the opposite side if the amendment prayed for was allowed.

4. The same was opposed by filing a reply on the ground that the petitioners-defendants could not be allowed to wriggle out from their admission, the case was fixed for evidence of the petitioners-defendants and one of the petitioners-defendants i.e. Harbhajan Singh had tendered his affidavit in the form of examination in chief and in the said affidavit also, date had been given as April, 2011. Learned Civil Judge (Junior Division), Rupnagar, dismissed the application vide order dated 02.08.2018. Learned counsel for the petitioner contended that the law was very liberal with

regard to amendment of written statement for correcting a typographical mistake.

5. Learned counsel contended that the amendment was permissible in terms of Section 153 CPC, that all such amendments which were necessary for the purpose of determining the real controversy between the parties were liable to be allowed, that additional issue No.3-A had been framed 'as to whether suit property had been partitioned between the parties in April 2011', therefore, it would be in the interest of justice to allow the proposed amendment to correct the clerical mistake from April 2011 to 13.04.1980. Learned counsel for the petitioners-defendants has tried to make out a case that another suit bearing No.732/2016 dated 13.09.2016 titled as 'Amrik Singh vs. Bhag Singh and others' was also filed in which the defendants had filed written statement (Annexure P-4), in which it had been mentioned that partition of the land had taken place on 13.04.1980 and on the said basis canvassed that it was apparent that the amendment prayed for in civil suit No.48/2016 dated 20.01.2016 was a typographical mistake and ought to have been allowed.

6. Per contra, learned counsel for the respondent-plaintiff contended that a perusal of the written statement (Annexure P-4) filed by the petitioner-defendant in connected case (civil suit No.732/2016 dated 13.09.2016) reveals that it was filed on 22.02.2017 i.e. later than the written statement (Annexure P-2) filed on 05.08.2016 in civil suit No.48/2016 dated 20.01.2016, while the application for amendment (Annexure P-5) was filed on 04.05.2018 i.e. almost one year and two

months after the filing of the written statement dated 22.02.2017 in subsequent suit No.732/2016 besides the petitioner-defendant Harbhajan Singh had tendered his affidavit in the form of examination in chief and in the said affidavit also, he had given the date of partition as April, 2011. Copy of the evidence of Harbhajan Singh in the shape of affidavit has been placed on record as Annexure R-7, in which, it has been mentioned that the parties were enjoying the parcels of property which had fallen out of a family settlement in April, 2011. However, petitioner-defendant Harbhajan Singh didn't appear for cross-examination. The petitioners-defendants also examined Sucha Singh, who stepped in the witness box as DW1 and tendered his affidavit on 07.09.2017 by way of examination in chief and in paragraph No.2 of the affidavit, he specifically averred on the lines of the defence taken in the written statement that partition of the disputed property had already taken place between the parties six years back and all the co-sharers were in their respective portions and during cross-examination the said witness stuck to his aforementioned stand. Affidavit of DW-1 Sucha Singh has been placed on record as Annexure R-6. Learned counsel for the respondent-plaintiff further pointed out by referring to the application for amendment (Annexure R-8) that the amendment had been sought only in preliminary objection No.1 of the written statement, whereas the same date i.e. April, 2011 had also been mentioned in paragraph No.4 of the written statement on merits i.e. Annexure P-2, in which, it had been elaborately mentioned that not only the suit property had been partitioned in April, 2011 but all the co-sharers had been allotted different parcels of joint property and since then each and every co-sharers had been enjoying

his/her share fallen to such co-sharer at the time of partition resultantly the suit could not be proceeded and deserves dismissal on said score alone.

7. Learned counsel contended that amendment could not be allowed after the commencement of trial unless the Court came to the conclusion that inspite of due diligence the party seeking amendment could not have raised the plea before the commencement of trial. The application for amendment of written statement was filed on 04.05.2018, whereas issues had been framed on 18.11.2016, respondent-plaintiff had led evidence, where after the petitioners-defendants examined two witnesses i.e. DW1 and DW 2 and after considerable lapse of time and it was only thereafter that the application was moved for amendment of written statement. The application was not maintainable on account of due diligence and had rightly been dismissed. Learned counsel for the respondent-plaintiff contended that the petitioners-defendants had filed written statement in civil suit No.732/2016 on 22.02.2017 while additional issue No.3-A was framed in CS No.48/2016 on 03.07.2017 and that the additional issue was framed in the light of categoric stand of the petitioners-defendants in the pleadings in civil suit No.48/2016. By no stretch of imagination, it could be said that 'April 2011' mentioned in written statement (Annexure P-2) dated 05.08.2016 was an inadvertent typographical mistake and in fact the petitioners-defendants had taken two diametrically opposite stands in two different written statements filed in civil suit No.48 of 2016 and 732/2016 with a view to derive a benefit and that had the plea of typographical error been correct then the application for amendment would have been filed immediately in civil suit No.48/2016 on

filing of written statement dated 22.02.2017 in civil suit No.732/2016 but despite additional issue No.3-A with regard to partition having taken place in April 2011 being framed on 03.07.2017, the petitioners-defendants maintained a stoic silence despite availing thirteen effective opportunities to lead evidence till the fag end of the case when application (Annexure P-5) was moved on 04.05.2018.

8. I have considered the submissions of learned counsel for the parties. No doubt the law is liberal with regard to amendment of written statement in comparison to amendment of a plaint, when the correction sought is with regard to a typographical mistake. However, in the instant case issues were framed, evidence was led by the respondent-plaintiff, where after petitioners-defendants availed more than thirteen effective opportunities for leading evidence and examined two witnesses, who have tendered their affidavits in line of the written statement in civil suit No.48/2016 filed on 05.08.2016. Additional issue No.3-A was framed in civil suit No.48 of 2016 on 03.07.2017 with regard to partition of the property having been taken place in the year April 2011 while written statement was filed in civil suit No.732/2016 on 22.02.2017, while application for amendment of the written statement (Annexure P-5) was filed on 04.05.2018 without showing exercise of due diligence while taking up the bald plea of the date April 2011 having been wrongly mentioned instead of 13.04.1980 on account of typographical mistake. However, the facts of the case go to show beyond an iota of doubt that the amendment prayed for is not on account of typographical error besides the petitioners-defendants have also failed to plead or prove exercise of due diligence and

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the contradictory stands in two suits besides the timing of the application for amendment in civil suit No.48/2016 goes to show that the amendment has been sought just to delay the proceedings of the case.

9. Thus the plea that the amendment sought in respect of a typographical error can be allowed under Section 153 CPC is bereft of merit. In the light of position noted above, I find no merit in the submissions on behalf of the petitioner-defendant. No interference is warranted with the well reasoned order passed by the learned Civil Judge (Junior Division), Rupnagar. Accordingly, the revision petition is dismissed.

(B.S.WALIA)
JUDGE

09.10.2018.

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No