

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

CR-7845-2015 (O&M)

Date of decision : 21.2.2018

Jasmer Singh and others

..... Petitioners

Versus

Raj Karan and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vivek Goyal, Advocate for the petitioners.

Ms. Aashna Gill, Advocate for
Mr. Aman Pal, Advocate for respondents.

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 21.10.2015, (Annexure P-1), passed by learned Civil Judge (Junior Division), Kurukshetra, vide which an application filed by the plaintiffs-petitioners for amendment of the plaint was dismissed, inter alia, holding that amendment cannot be said to be directly related to the main controversy which could help in the proper adjudication of the case.

Heard.

It comes out that plaintiffs-petitioners who are the sons of Bhagwan Singh filed a suit in the year 2013 (Annexure P-2) for declaration and possession with consequential relief of permanent injunction.

A perusal of the plaint shows that plaintiffs-petitioners had claimed that their father- Bhagwan Singh and Smt. Bhagwan Kaur, sister of Bhagwan Singh were the owners in possession of the suit land. They sold the said suit land to defendants vide sale deed No. 706/1 dated 18.7.1984. The sale deed is sought to be challenged on the ground that suit property is a joint Hindu family property. Plaintiffs-petitioners are the co-parceners and they have right by birth in the said property. Therefore, the same could not be sold.

By way of amendment plaintiffs-petitioners want to plead that Smt. Bhagwan Kaur had executed a Will dated 16.1.1969 in favour of plaintiffs i.e., Jasmer Singh, Piara Singh, Joginder Singh and Manphool Singh. It is stated that the Will was earlier not in their notice. Application for amendment was filed at the stage of the evidence of the plaintiffs.

I am of the view that firstly an application for amendment was filed when the trial has already begun. Moreover, plaintiffs claimed that the sale deed executed by their father Bhagwan Singh as well sister of Bhagwan Singh, i.e. Smt. Bhagwan Kaur on 18.7.1984 is illegal, null and void as they are the members of the joint Hindu Family; are the co-parceners and the sale deed could not be executed by Bhagwan Singh and Smt. Bhagwan Kaur. The Will executed by Smt. Bhagwan Kaur in the year 1969 has nothing to do with the controversy and need not be decided in the present case since the same is not under challenge.

In the suit, the Court is only required to see as to whether plaintiffs-petitioners are able to challenge the sale deed on the basis of grounds mentioned in the plaint. The Will is not required to be adjudicated

upon.

Therefore, amendment is otherwise unnecessary. It is an established law that an amendment which is unnecessary and not necessary to decide the controversy cannot be allowed.

Learned counsel for the petitioners has referred to certain authorities of Hon'ble Supreme Court in ***2007 (RCR) Civil 866***, titled as ***Ramchandra Sakharam Mahajan versus. Damodar Trimbak Tanksale (D) and others; 2004 (3) RCR (Civil) 723*** titled as ***Pankaja and another vs. Yellappa (D) by LRs and others*** and ***2000 (1) RCR (Civil) 511*** titled as ***B.K.N. Pillai versus P. Pillai***. He has further referred to a judgment of this Court in ***2014 (69) RCE (Civil) 767*** titled as ***Ali Mohd. and another versus Mohd. Hanif and others.***

I am of the view that since this Court has come to the conclusion that the amendment sought for by the plaintiffs-petitioners is unnecessary to decide the controversy in hand, therefore, same was rightly declined by the learned trial Court. The authorities as mentioned above are not applicable where unnecessary amendment is sought to be made.

Learned counsel for the petitioners has contended that in two other suits, filed between some of the plaintiffs and defendants and their father, such amendment was allowed vide separate orders dated 21.8.2015 (Annexures P-6 and Annexure P-7) passed by learned Civil Judge, (Junior Division), Kurukshetra, and therefore, on parity the amendment should be allowed.

I am of the view that when it is found that proposed amendment is unnecessary to decide the controversy in hand even the parity cannot be claimed.

Dismissed.

21.2.2018
preeti

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No