

CR No. 8277 of 2018

DECIDED ON: DECEMBER 05, 2018

THAKAR LAL SINCE DECEASED THROUGH HIS LR'S & OTHERS

.....PETITIONERS

VERSUS

BHAGWAT AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ashok Kaushik, Advocate
for the petitioners.

AVNEESH JHINGAN, (ORAL)

The present civil revision petition has been filed being aggrieved of the order dated 21.11.2018 passed by Civil Judge (Jr. Division) Palwal (hereinafter referred to as 'learned trial Court') dismissing the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'Code') filed by the petitioner seeking amendment of written statement.

The facts in brief are that the respondents filed a civil suit on 16.10.2013 for possession by way of partition and for permanent injunction against the petitioner. The petitioner and the respondents are the co-sharer in the joint property comprising Khewat No. 181, Khatauni No. 232, Khasra No. 128 (1-2), 136 (0-10) total measuring 1 kanal 12 marlas within the revenue

estate of Village Katesra, Tehsil and District Palwal alongwith property bearing Ahata No. 89, 90, 91, 146, 147 and 190 situated within the abadi deh of Village Katesra, Tehsil and District Palwal.

On notice, the petitioner filed a written statement with the objection that the respondents have not approached the Court with clean hands and have not sought partition of the entire property. Ahata numbers of the other properties which were not included in suit were mentioned in the written statement. The written statement was filed in 2014.

During the pendency of the suit, an application under Order VI Rule 17 of the Code was filed in 2018 to amend the written statement to raise preliminary objection that the respondents are seeking partial partition. The application was dismissed vide impugned order dated 21.11.2018. Hence, the present petition.

Learned counsel for the petitioner argues that the amendment of written statement is necessary as the respondents have not approached the Court with clean hands and is seeking partial partition of the property without mentioning other properties situated in abadi deh.

Order VI Rule 17 is quoted below:

“17. Amendment of pleadings.—

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the

conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

As per the said provision amendment of the pleadings can be allowed if it is necessary for the purpose of determining the real questions in controversy between the parties. The proviso states that the amendment after the commencement of trial shall only be allowed, if the Court comes to the conclusion that in spite of due diligence, the party was not able to raise the matter before the commencement of the trial.

In the present case the suit was filed in 2013 and the written statement was filed in 2014. A specific stand was taken in the written statement that the petitioner and respondents are the co-owners. It cannot be said that the petitioner was not aware of the fact that suit for partial partition had been filed in spite of due diligence. Moreover, when such objection was taken in the written statement, that itself establishes the knowledge of the said fact. The application has been moved almost after four years of filing of written statement.

In such circumstances, no shadow can be cast upon the impugned order passed by learned trial Court. The application has been filed at a belated stage just to delay the matter.

Accordingly, the present civil revision petition without merit is dismissed.

DECEMBER 05, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***