

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

C.R.No.934 of 2016 (O&M)

Date of Decision: May 09, 2018

Nirmal Singh

...Petitioner

Versus

Swaran Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Vipin Mahajan, Advocate,
for the petitioner.

Mr.G.S.Sirphikhi, Advocate,
for respondent Nos.2 & 4.

AMIT RAWAL, J. (Oral)

As per office report, notice sent to respondent No.1 through his counsel before the trial Court has been received back with the report “please send the summons to Swaran Singh because he is not in touch with him since 2014.” It has been submitted that five plaintiffs have filed the suit and all are being represented by a counsel except respondent No.1-Swaran Singh. For the adjudication of the present revision, the presence of other plaintiffs is sufficient.

The present revision is directed at the instance of the petitioner-defendant against the impugned order dated 14.12.2015 (Annexure P-4), whereby the application moved by him for causing amendment at the end of Para 1 and before the start of Para 2 of the written statement, has been dismissed.

Mr.Vipin Mahajan, learned counsel representing the petitioner-

defendant submitted that the respondent-plaintiffs instituted the suit claiming declaration for setting-aside the order dated 18.12.2006 passed by the Collector, Batala, whereby the appeal preferred by defendant Nos.1 and 2 against Kartar Kaur regarding mutation No.1043 of Village Rampur, Tehsil Batala with regard to estate of Gurdit Singh son of Sher Singh, resident of Village Rampur, Tehsil Batala, which was sanctioned on 12.10.1996, had been set-aside. In the aforementioned suit, the petitioner filed written statement (Annexure P-2), wherein it was stated that the plaintiffs have not come to the Court with clean hands as they have concealed material facts from the Court as Kartar Kaur had solemnized second marriage with Dalbir Singh after death of her first husband Bakhshish Singh. When the suit was slated for the defendants' evidence, the application for amendment was moved for incorporating the following averments at the end of Para 1 and before the start of Para 2 of the written statement:-

“Infact the mutation no.1043 had been wrongly sanctioned in favour of Smt.Kartar Kaur regarding the estate of Gurdit Singh deceased. The said Bakhshish Singh was expired in year 1953-54 and after his death, the said Kartar Kaur remarried with Dalbir Singh. The said Gurdit Singh died in year 1988. After the death of Gurdit Singh, the said Kartar Kaur was not the widow of Bakhshish Singh as she had already been remarried with Dalbir Singh and the defendant nos.1 and 2 are only the legal heirs of Bakhshish Singh deceased son of Gurdit Singh. Hence said order dated 12.10.1996 was set aside by the court of the Assistant Collector, Ist Grade, Batala vide Order dated 7.2.2008 and the same of said Smt.Kartar Kaur was deleted as legal heirs of Bakhshish Singh. The said Kartar Kaur had left no right, title and interest with the estate of Gurdit Singh as she was not the widow of Bakhshishish Singh at time of death of

Gurdit Singh. Hence the said order dated 12.10.1996 was set aside. The said order dated 12.10.1996 is illegal, ultravires, null and void, inoperative, ineffective and was the result of collusion and conspiracy of the plaintiffs and said Kartar Kaur with the Assistant Collector, IInd Grade. The said Assistant Collector, IInd Grade was not competent to sanction the mutation which was contested one and it was only the court of Assistant Collector, Ist Grade, Batala who was competent to sanction the mutation and the mutation was rightly sanctioned in favour of the defendant nos.1 and 2 vide order dated 7.2.2008. The said order is legal, valid, genuine and is binding upon the plaintiffs. The said Kartar Kaur was not the legal heirs of Gurdit Singh deceased. The said entries which were incorporated in the Jamabandi in the name of Kartar Kaur are illegal, ultravires, null and void, inoperative, ineffective and the same has got no binding force on the rights of the answering defendant. The order of the revenue official has become final. The plaintiffs have not filed any Revision etc. against the order dated 27.5.2009. It is denied that the said Order dated 7.2.2008 and 27.5.2009 are illegal or void or null or without jurisdiction. The plaint is vague as no description of the land left by Gurdit Singh deceased has been given in the plaint.”

The aforementioned amendment is clarificatory and explanatory in nature and would not tantamount to withdrawing of the admission, for, no prejudice would be caused to the respondent-plaintiffs as they would be at liberty to file the amended replication, if any, and cross-examine the witnesses.

Mr.G.S.Sirphikhi, learned counsel appearing on behalf of respondent Nos.2 to 5 submitted that the amendment sought does not confer to the amended provisions of Order 6 Rule 17 CPC and no explanation has come forward in support of the fact that a valuable right has been accrued.

I have heard the learned counsel for the parties and appraised the paper book.

The amendment, as extracted above, sought to be incorporated at the end of Para 2 of the written statement is clarificatory and explanatory in nature and does not in contradiction with the stand taken in the written statement, much less does not amount to withdrawal of the admission. The plaintiffs would be at liberty to file the amended replication and cross-examine the witnesses on those lines.

Resultantly, the impugned order is set-aside. Application for amendment is allowed. Petitioner is permitted to file amended written statement within 15 days from the receipt of certified copy of this order and replication, if any, within another 15 days. The trial Court shall proceed with the trial from the stage it was slated for subject to payment of ₹5,000/-, to be paid to the respondent-plaintiffs.

Revision petition stands allowed.

May 09, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No