

CR No.982 of 2017(O&M)
Date of Decision: 17.12.2018

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Nakul Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have challenged the order dated 22.11.2016 passed by Civil Judge (Junior Division), Amloh vide which application for amendment of the written statement filed by the defendants/petitioners was declined.

[2]. Petitioners sought to add para No.20-A by way of proposed amendment to plead that necessary parties namely Gurnam Singh, Jora Singh, Gurdev Kaur, Jinder Kaur, Kesar Singh, Neula, Bodi, Joginder Singh and children of Bhinder Kaur have not been impleaded in the suit and in the absence of the aforesaid co-sharers, the suit for partition cannot proceed.

[3]. Cross-examination of plaintiff dated 14.01.2016 was

relied to contend that the factual matrix in respect of composition of family/co-sharers has been admitted by the plaintiff in his cross-examination. The case is fixed for defendant's evidence, which is yet to start.

[4]. The application for amendment of the written statement has been declined primarily on the ground that the defendant being grand-son of Jaimal Singh was supposed to be aware about the legal representatives of his grand-father and the same only came to the notice of the petitioners on disclosure of fact in the cross-examination of the plaintiff.

[5]. Since the plaintiff himself has not impleaded all the co-sharers, despite having knowledge about the same, therefore, at this stage, the plea being a factual plea and the same will go to the very roots of the case, can be allowed to be incorporated by way of proposed amendment. The amendment of the written statement is to be liberally construed. The parameters for amendment of the written statement stand on different pedestal than that of amendment of the plaint. Defendants even can take inconsistent plea in their written statement. It is not a case of withdrawal of any admission made by the defendants in their written statement.

[6]. Since evidence of the defendants is yet to start, therefore, in my considered opinion, indulgence in terms of

incorporation of proposed amendment can be granted in favour of the defendants/petitioners

[7]. In view of above, the present revision petition is allowed. Impugned order dated 22.11.2016 passed by Civil Judge (Junior Division), Amloh is hereby set aside, allowing the application for amendment of the written statement.

17.12.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No