

CR-2303-2015 (O&M)

203

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

CR-2303-2015 (O&M)

Date of decision : 03.05.2019

Sardaran

... Petitioner

Versus

Manjoor Ali and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. F.S. Virk, Advocate
for the petitioner.

Mr. M.K. Singla, Advocate with
Ms. Shikha Singla, Advocate
for respondent Nos.1 to 3.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-plaintiff No.1, for amendment of the plaint, at the stage of examination of last witness of the defendants, has been declined.

Learned counsel for the petitioner submitted that the plaintiffs instituted the suit for declaration to be joint owner to the extent of 2/5th share out of the property mentioned at letter 'A', on the basis of inheritance of Late Gafoor Mohammad @ Gafoor son of Hussaina @ Saina Khan and for further declaration to the effect that Will bearing Vasika No.212 dated 02.11.1998, executed by Gafoor Mohammad @ Gafoor, in favour of the defendants and Smt. Mano, was illegal null and void with further

CR-2303-2015 (O&M)

declaration by laying challenge to mutation No.968, sanctioned on the basis of the aforesaid Will, joint possession of the property and permanent injunction seeking restraint. Though there is reference of the parties being belonging to Muslim community, but the share was claimed as per the Hindu Law and not Muslim Law and sought the amendment, in this regard. The Court below has erroneously dismissed the application being barred by law of limitation. The said amendment would not take away the right of the defendants as the same can be rebutted through amended written statement and objection qua limitation can be taken, thus, urges this Court for setting aside the impugned order, under challenge.

Mr. Singla, learned counsel appearing on behalf of respondent Nos.1 to 3, submitted that the amendment was not in accordance with the amended provisions of Order 6 Rule 17 of the CPC i.e. expression of exercise of "Due Diligence" and it would tantamount to *de novo* trial, as the suit was filed on 25.08.2008, thus, urges this Court for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that the objection of Mr. Singla qua non-reference of belonging to Muslim community is neither here and there, as in para No.1 of the plaint, there is specific averment, in this regard. For the sake of brevity, Para No.1 of the plaint reads as under:-

"1. That the plaintiff No.1 is the resident of Hamayunpur (Sirhind), Tehsil & Distt. Fatehgarh Sahib and the plaintiff No.2 is the resident of Aman Colony, Defence Bandh, Sirhind, Tehsil & Distt. Fatehgarh Sahib. The parties to the suit are belongs to Muslim community."

Learned counsel for the petitioner, at this stage, submitted that

CR-2303-2015 (O&M)

he has already led the evidence, except the amendment. The amendment sought to be incorporated is only the pleadings and would relate back to the filing of the suit, in my view, the Court below should not have adopted hyper-technical approach in bringing the provisions of Order 6 Rule 17 of CPC i.e. "despite exercise of due diligence" as there is specific pleadings, in this regard and cognizance thereof can be taken, even in the absence of issue, at the final stage of the suit, but the person cannot be thrown out.

Keeping in view the aforementioned facts and circumstances, the impugned order, under challenge, is set aside and the application seeking amendment is allowed. The respondents-defendants shall be at liberty to file amended written statement.

The present revision petition stands allowed, subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

03.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**