

In the High Court for the States of Punjab and Haryana at Chandigarh

Date of Decision: April 29, 2019

1) *C.R. No. 7025 of 2018*

Sarbveer Singh

... Petitioner

Versus

Jawal Kaur and others

... Respondents

2) *C.R. No. 7029 of 2018*

Sarbveer Singh and another

... Petitioners

Versus

Jawal Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.V.S. Chugh, Advocate,
for the petitioner(s).

Mr. Vikas Bishnoi, Advocate,
for respondent Nos. 1 to 5.

Amit Rawal, J. (Oral)

This order of mine shall dispose of two Civil Revisions bearing Nos. 7025 and 7029 of 2018.

C.R. No. 7025 of 2018 is directed against the order dated 27.09.2018 (Annexure P/5) whereby evidence of the petitioner/defendant has been closed.

C.R. No. 7029 of 2018 is directed against the order dated 24.09.2018 (Annexure P/5) whereby two applications filed under Order 6 Rule 17 CPC for amendment of the written statement on behalf of the petitioners/defendants no.1 and 2 have been dismissed.

Mr. R.V.S. Chugh, learned counsel appearing on behalf of the

petitioners, submitted that plaintiffs/respondents no.1 to 5 filed the suit for declaration and permanent injunction against the petitioners/defendants no.1 and 2 and proforma respondent no.6/defendant no.3 claiming themselves to be the owner of the share of land mentioned in the head note of the plaint on the basis of inheritance of Bachan Singh son of Labh Singh, as well as, challenge to mutation no. 1554 dated 30.03.2010 sanctioned in favour of the petitioners/defendants no.1 and 2 and proforma respondents/defendant no.3 and further relief of permanent injunction restraining the defendants no.1 to 3 from alienating the suit land. Defendants no.1 to 3 contested the suit by filing written statement. Thereafter, replication was filed. On 22.08.2012 the issues were framed and the matter was listed for plaintiffs' evidence on 24.09.2012. The case was kept pending for adjudication of the application filed under Order 39 Rule 1 and 2 CPC, which was, ultimately, disposed of on 06.05.2014 and the matter was fixed for plaintiffs' evidence for 23.07.2014. On 11.03.2015 oral evidence of the plaintiffs was closed and two dates i.e. 21.04.2015 and 13.05.2015 were given for tendering the documents by the plaintiffs and the case was listed for 19.05.2015 for defendants' evidence which was adjourned to 21.05.2015 and 25.05.2015. Thereafter, two applications were moved, one for correction of number of Will and other for certain facts explaining the children of Bachan Singh and deletion the name of Jal Kaur. But the Court below has dismissed the applications without assigning any reason, only on the premise that it was only to fill up the lacuna as the said application has been filed after concluding the entire evidence of the plaintiffs. While dismissing the applications for amendment dated 24.09.2018, the Court had ordered that if the defendants will not lead any evidence on the next date i.e. 27.09.2018,

then the evidence of the defendants shall be deemed to be closed. On 27.09.2018, application was filed by the defendant for the purpose of giving more opportunities for leading evidence, which was dismissed vide order dated 27.09.2018.

Mr. Vikas Bishnoi, learned counsel appearing on behalf of the respondents no.1 to 5 opposed the aforementioned prayer by supporting the impugned orders under challenge, submitted that it was an attempt to fill up the lacuna as no such pleadings were raised to withdraw the admission, which is not permissible in the eyes of law, but does not strictly oppose the correction of the Will and urges for dismissal of the revision petitions.

I have heard learned counsel for the parties, appraised the paper-book and of the view that there is force in the application for correction of Will (Annexure P/1) as instead of number 199 of the Registered Will, the number 144 was mentioned. In para nos. 3, 4 and 5 by inserting and para no. 3A in the application dated 22.07.2015 (Annexure P/2), defendants wanted to explain number of children of Bachan Singh and deletion the name of Jal Kaur and also certain events which in my view, by amendment does not tantamount to altering the nature. The plaintiff would be at liberty to cross-examine the witnesses of the defendant to be examined in support of the defence taken in the amended written statement. It is not a case of filling up of lacuna but explanatory and elucidative in nature, parameters for considering the amendment of the written statement are totally different. Be that as it may, the Court should not be strict in declining the same without assigning any reason as orders do not reflect any cogent reason except expression of filling up of lacuna. Plaintiffs have taken numerous adjournments for calling the witnesses. There has to be a balance

vis-a-vis the stage of the suit.

For the reasons mentioned above, the impugned orders dated 24.09.2018 and 27.09.2018 are set aside. The applications for amendment of the written statement are allowed. Since the written statement has already been filed, 15 days time is granted to file the replication. The parties are at liberty to lead evidence in accordance with law in support of their pleading after availing four effective opportunities each.

Both the Civil Revisions i.e. CR Nos. 7025 and 7029 of 2018 stand allowed.

April 29, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No