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

CR-7687-2017 (O&M)

Date of decision : 11.01.2019

Jaswinder Kaur

... Petitioner

Versus

Balbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order (Annexure P-4), whereby the application at the instance of the petitioner-defendant No.3 for amendment of the written statement by incorporating para No.3A, in a suit for partition, at the stage of defendants' evidence, has been declined.

Learned counsel appearing on behalf of the petitioner-defendant No.3 submitted that the amendment sought to be incorporated is clarificatory and would not amount to withdrawing the admission or substitution of the same, and therefore, should not have been discarded as it would be a question of proving the pleadings and the plaintiff/respondent No.1 would have a chance to cross-examine the witnesses and it would also

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help the Court for adjudication of the *lis*.

Learned counsel for the respondent No.1-plaintiff submitted that the amendment is inconsequential and it is an attempt to fill up the lacuna, which cannot be permitted as the issue had already framed, thus, urges this Court for dismissal of the present revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sodhi, for, the amendment sought to be incorporated by adding the following para, is essential and necessary and would help the Court for adjudication of the *lis*:-

"3A. That since one son of Harbans Kaur namely Avtar Singh whose name depict in the registered Will dated 5.8.1988 has died intestate and after his death, the other three sons of Harbans Kaur widow of Ajit Singh namely, Darshan Singh, Balbir Singh and Hazura Singh became co-sharers to the extent of 1/3rd share in the property in dispute. It is pertinent to mention over there that Hazura Singh also executed a registered Will qua his share in the property in dispute vide registered Will dated 25.7.2003 duly registered in the office of Sub Registrar, Amritsar vide Wasika No.580, Bahi No.3, Zild No.479, page 16-17 in favour of the deponent namely, Jaswinder Kaur (defendant No.3). Hazura Singh died on 8.1.2013."

Defendant No.3, in support of the amendment, would tender any evidence, in case the amendment is allowed, it would be in terms of the amendment and the plaintiff would at liberty to cross-examine. The case is not only based upon the pleadings, but also built during the evidence stage and having a conspectus of all the aforementioned things, the Court

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has an occasion to decide the same. In my view, this would not tantamount to altering the defence or withdrawing of the admission, but a clarificatory in nature.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law, much less, suffers from illegality and perversity and the same is hereby set aside. The present revision petition stands allowed, subject to the payment of costs of ₹5,000/-

11.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No