

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 9 of 2019

Date of Decision: 04.02.2019

Neelam

.....Petitioner

Versus

Rajnder and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ajay Ghangas, Advocate
for the petitioner.

AVNEESH JHINGAN, J.(oral)

The present civil revision petition has been filed being aggrieved of the order dated 6.12.2018 passed by Civil Judge, (Junior Division), Gurugram (hereinafter referred to as 'Civil Court') dismissing the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC').

The facts in brief are that respondents no. 1 and 2/plaintiffs (for short 'plaintiffs') filed a suit for declaration to the effect that the plaintiffs and respondent No.4/defendant No.2 (for short 'respondent No.4') are owners of property of respondent No.5/defendant No.3-Dharampal as his whereabouts were not known since last seven years.

During the pendency of the proceedings, the petitioner was impleaded as defendant No.8. She filed a counter claim claiming herself to be adopted daughter of respondent No.5 and seeking declaration that she is the owner of property of respondent No.5. The suit was decreed vide judgment and decree dated 5.3.2014. Aggrieved of the judgment and decree, the petitioner preferred an appeal. The judgment and decree was set

aside on the ground that no issue was framed on the counter claim filed by the petitioner. The matter was remanded back to the trial Court. After remand, an application was moved by the petitioner seeking opinion of the medical board regarding her age. This application was moved in order to substantiate the fact that there was age difference of 21 years between the petitioner and respondent No.5. The said application was dismissed. The Civil Court opined that even by constituting a medical board for determining the age would not come to rescue of the petitioner to validate her adoption by respondent No.5 in view of the provisions of Hindu Adoptions and Maintenance Act, 1956.

Thereafter, another application under Order VI Rule 17 CPC was filed seeking amendment in the counter claim to the effect that the parties are from Jatt Community and governed by customary law in which there is no bar that the age difference should be of 21 years. The Civil Court relying upon the decision of the Supreme Court in **Peethani Suryanarayana Versus Repaka Venkata Ramana Kishore, 2009 (11) SCC 308**, dismissed the application.

Aggrieved of the order, the present civil revision petition has been filed.

Learned counsel for the petitioner contends that the Civil Court erred in dismissing the application as the amendment would not change the nature of the suit.

The contention raised by learned counsel for the petitioner lacks merit. The matter was remanded in 2014 by the Appellate Court for framing the issue on the counter claim and deciding the suit after affording opportunity to the parties to adduce evidence. In order to succeed in the counter claim the petitioner is required to establish that there was age

difference of 21 years between her and respondent No.5. It was with that purpose that earlier an application was moved for direction to constitute a medical board. In the said application, there was no such averment that the parties were covered by the customary law and there is no requirement of age difference of 21 years, rather, the application was moved to establish the fact that there was 21 years age difference. That application was dismissed. The order was not challenged. The present application is only a tool being employed to explore the possibility of various options available to the petitioner.

Order VI Rule 17 is reproduced below:

Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

As per proviso to Rule 17, amendment is not to be allowed unless the court conclude that in spite of due diligence, the matter could not have been raised by the parties before commencement of the trial. In the present case, no such explanation has been put forth neither before the Civil Court nor before this Court explaining the reason as to why the said fact could not be raised by the parties at the earlier point of time.

No interference is called for in the impugned order.

The civil revision is dismissed.

It is, however, clarified that nothing stated in this order shall be construed as expression of opinion on the merits of the case.

04.02.2019
reema

(AVNEESH JHINGAN)
JUDGE

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