

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

CR No.2623 of 2017(O&M)

Date of decision: 9.1.2020

Parkash Chand

.....Petitioner

VERSUS

Aditya and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jai Bhagwan Sharma, Advocate
for the petitioner.

Mr. Ramender Chauhan, Advocate
for the respondents.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been directed against order dated 21.03.2017 (Annexure P-1) whereby application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint to correct the date of adoption as 22.04.1955 in place of 22.04.1958 filed at the fag end of trial when the case was fixed for rebuttal evidence has been dismissed with the observations recorded in various paras starting from para 6 onwards.

Indisputably, Parkash Chand – petitioner filed suit for declaration that he is adopted son of Rameshwar son of Sh. Basanta and owner in possession of land, detailed in para 1 of the grounds of revision. In the plaint, it was alleged that the petitioner was adopted by Rameshwar and his wife Kalawati on 22.04.1958. The parties concluded their evidence and the case reached the stage of leading evidence in rebuttal when the

instant application was filed seeking amendment of the plaint. A relevant extract from sub para (ii) of the application for amendment, reads as follows:-

“...The plaintiff in his evidence has produced the documents Ex.P24, P26, P27, P28 and according to these documents it has been shown that the plaintiff was adopted in the year 1955. Now the case has been fixed for rebuttal evidence and arguments. While preparing the case for arguments and further proceedings, Sh. Narender Mudgil, Advocate Bhiwani came to know that actually the plaintiff was adopted on 22.04.1955 whereas in the petition due to typing mistake the adoption date has been mentioned as 22.04.1958...”

Perusal of the aforesaid averments makes it evident that the petitioner sought to amend the plaint on the advice of his present counsel in order to bring his date of adoption mentioned in the plaint in conformity with the documents Ex.P24, P26 to P28.

Counsel for the petitioner, in response to a query, has fairly informed that when the petitioner appeared in the witness box, he did not make a statement as to the date of his adoption though asserted his right to be adopted son of Rameshwar. The trial Court in para 9 of the impugned order has held that the basis of the plaintiff's amendment is the document Ex.P24 which is the judgment of a Civil Court and therefore, if any fact has been decided regarding the date of adoption in the aforesaid judgment, the same may be considered by taking the judicial notice of judgment of a competent Civil Court. The other document mentioned in the application as Ex.P26 to P28 are the statements of Smt. Shanti, Ram Kumar and Puran in the earlier Civil Suit No.422 of 1996 and a perusal of the same goes to

show that there is nothing regarding the date of adoption in the aforesaid statement.

Counsel for the petitioner would state that in the statement of Ram Kumar marked as an exhibit, there is reference to date of adoption of the petitioner.

Admittedly, application has been filed at a highly belated stage without any tangible explanation. The trial Court has held that Ex.P24 may be taken into account for deciding the question of adoption. Since the documents Ex.P26 to P28 have been marked as exhibits and in case the same are found to be admissible in evidence, the trial Court may also take those documents in consideration for deciding the question of adoption of the petitioner.

With the aforesaid observations, the petition stands disposed of.

JANUARY 9, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no