

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

CR No. 849 of 2020 (O&M)

Date of Decision: 6.2.2020

Prem Bhatti

...Petitioner

Vs.

Safhi Masih Bhatti and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rahul Poppal, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The plaintiff did not show due diligence in prosecuting his suit by failing to lead evidence despite last and final opportunities granted to him. The suit was filed in the year 2017. The issues were framed on 4.7.2017. Learned Civil Judge, Junior Division Batala records in the impugned order dated 13.11.2019 that the plaintiff had suffered a statement on 11.10.2019 that he will conclude his entire evidence by the next date fixed for hearing, but, on the next date another request for adjournment was made by his counsel. Since the plaintiff had already availed a number of effective opportunities but had failed to conclude his evidence, the trial court found no justification in adjourning the case and proceeded to close his evidence by order. Now, the case is fixed for the evidence of the defendants.

2. Counsel informs that the defendants had moved an application under order VI rule 17 CPC for amending the written

statement but that application is pending for 4.3.2020. Assuming that the application for amendment is allowed and new facts are introduced by the defendants in a partition suit, then the structure of the impugned order closing evidence would get altered and disturbed and the plaintiff would have a right to oppose or accept the amendment/s and would inevitably take time to file a replication, if required. The rhythm of the suit has already been upset with the presentation of the application by the defendants' asking for the amendment of their written statement and if that is so, I do not see why a last and final opportunity not be given to the plaintiff to lead his left over evidence in a suit for partition.

3. The partition proceedings are meant to divide the properties owned by them share-wise. Parties are not in the position of adversaries by virtue of the nature and these proceedings. Parties are to be looked at in the manner which encourages family property disputes to be resolved equitably. The parties are close relatives. The trial Judge need not have viewed this case at the stage it was when the evidence was closed as it might do in commercial or non-commercial disputes. He could have taken a slightly liberal view even at the cost of imposing conditions on the plaintiff which could compensate the defendants for their loss of time. But the defendants have also delayed the suit as they are in the process of seeking an amendment of their written statement. Therefore, taking a broad and equitable view of the matter in order to do substantial justice, this petition is allowed. The impugned order is set

aside.

4. The plaintiff is given one last opportunity to conclude his evidence within one month from the date of receipt of a certified copy of the order placed on the file of the trial Court with parties present and a further date fixed for taking further steps in the proceeding.

5. I have not issued notice to the respondents for the reason that the matter of closing evidence is essentially between the trial Judge and this Court in its power of superintendence under Article 227 of the Constitution of India. This is fortified by the request of the defendants to the trial court to amend their reply. Neither would the defendants be gravely prejudiced by this order as none of their rights are being disturbed.

6. Only the path has been cleared for a contested partition proceeding where the co-sharers can have their say to their fill, which will bear lasting harmony and be in the best interest of the family members in the process of physical division of shares in joint property. It will be preferable if the trial court first decides the amendment application and then proceeds to record the statement of the petitioner. However, the discretion will be with the trial court as it deems fit as he is the best judge on the spot.

(RAJIV NARAIN RAINA)
JUDGE

6.2.2020

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*