

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

CR-242-2020 (O&M)
Date of decision: 15.02.2022

AMRIT MOHAN SINGH KAHLON ...Petitioner
V/S
MIT MOHAN SINGH KAHLON ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashwani Talwar, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaivir Singh, Advocate,
for the respondents.

(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

CM-1160-CII-2020

Application is allowed as prayed for and documents at
Annexures P-1 to P-8 are taken on record subject to all just exceptions.

MAIN CASE

Petition herein, under Article 227 of Constitution of India is for
setting aside the impugned order dated 25.11.2019 (Annexure P-1) passed by
learned Civil Judge (Junior Division), Panchkula whereby application under
Order 6 Rule 17 CPC for amendment of the plaint moved by
respondent/plaintiff has been allowed.

2. I have heard learned counsel for the petitioner and perused the
case file.

3. The order assailed herein is premised, inter alia, on the
following reasoning:

*“11. By way of the instant application, the plaintiff
wants to add an additional relief for partition of the basis of
same right which he claims by way of declaration. Since the*

plaintiff has set up his claim by way of the instant application that he is the owner to the extent of half share in the suit property by way of declaration, therefore, this Court sees no reason as to why the relief for partition of the same property for which the relief of declaration has been claimed, should be declined, any if the instant application is not allowed, then it is likely to result in multiplicity of litigation which would ultimately result in unnecessary wastage of energy and time of the parties to the instant suit.

12. *Since the plaintiff has himself sought the relief of declaration as stated above then by virtue of his right claimed in the instant suit, the plaintiff has the right to claim partition of the suit property. However, it is still to be adjudicated by the Court as to whether the plaintiff is entitled to the relief of declaration claimed by him in the instant suit. The parties are yet to adduce and conclude the cogent evidence in support of their respective contentions. Moreover, it is settled law as enshrined in legal maxim “interest reipublicae ut sit finis lititum” which means that it is in the interest of society as a whole, that the litigation must come to an end.*

13. *As regards the contention of learned counsel for the defendants that the present application is time barred as it has been filed after a delay of five years when the suit was instituted, it is relevant to mention that the claim for partition is a recurring cause of action and unless the division of the joint property is done, each party has got right to claim partition of the land. Moreover, the amendment in pleading relates back to the date when the suit was instituted.*

XXX

XXX

16. *Therefore, this Court is of the considered view that the present application is not barred by the law of limitation rather this application would have the effect of setting the controversy at rest between the contesting parties.*

17. *In these circumstances, without commenting upon the merits of the case, this Court is of the considered opinion that the proposed amendment of the plaint by virtue of the instant application is necessary to properly adjudicate the controversy between the parties. Hence, the present application is hereby allowed. However, the plaintiff is directed to pay a sum of Rs.2000/- towards cost to both the defendants equally.”*

4. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this court.

5. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I am in agreement.

6. In course of hearing, learned Senior counsel submits that no additional evidence will be recorded qua the amendment sought. In view thereof alone, I am of the view that trial will not be delayed, as is the allegation while opposing the amendment. No grounds are made out to interfere on that count as well.

7. Even otherwise, it is in the larger interest of the parties herein that prayer which ought to have been there at the first instance has been now allowed vide impugned order in order to avoid needless follow up litigation, which may have to be instituted as an outcome of the suit, in the event it is decreed in favour of the plaintiff as prayed.

8. Dismissed.

(ARUN MONGA)
JUDGE

February 15, 2022
vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No