

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

CR No.579 of 2015

Date of Decision: 18.05.2022

Surjit Singh

.....Petitioner.

Versus

Gurmail Singh @ Gurmeet Singh and others

.....Respondents.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Jagmeet Singh, Advocate for
Mr. Karamjit Singh Chahal, Advocate
for the revisionist-petitioner.

Mr. Manish Kumar Singla, Advocate
for respondents No.1 to 3-contesting respondents.

MEENAKSHI I. MEHTA, J.(Oral)

Feeling aggrieved by the order dated 05.11.2014 (Annexure P-7) passed by learned Civil Judge (Junior Division), Sunam (for short, 'the trial Court') whereby the application (Annexure P-3) moved by the petitioner-defendant No.1 (here-in-after to be referred as 'defendant No.1') and perma respondents No.4 to 6-defendants No.2 to 4 under Order 6 Rule 17 read with Section 151 CPC for seeking amendment in the written statement, has been dismissed, defendant No.1 has preferred the instant revision petition.

2. I have heard learned counsel for defendant No.1 (petitioner) as well as learned counsel for the plaintiffs (respondents No.1 to 3) in this revision petition and have also perused the file carefully.

3. Learned counsel for defendant No.1 contends that the dispute regarding the suit land being a passage, had already been settled by the Settlement Commissioner vide the order passed long back in the year 1965 in the proceedings under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short, 'the Act of 1948') and the said order is a part of the official record and moreover, the defendants have also mentioned about this fact in para No.2 (in para-wise reply), in their initially filed written statement and by way of the proposed amendment, they (defendants) merely intend to incorporate the details of the afore-said order and to file a counter-claim for claiming their ownership over the suit land by adding the same in their written statement but vide the impugned order, the trial Court has erroneously dismissed the application moved by them for this purpose and therefore, the said order is not legally sustainable and deserves to be set-aside.

4. Per contra, learned counsel for the plaintiffs argues that the issues have been framed and the trial has already commenced in the civil suit and therefore, the proposed amendment is not permissible. To buttress his contentions, he places reliance upon the decision rendered by the Apex Court in **Ashok Kumar Kalra Versus Wing Cdr. Surendra Agnihotri and others (Petition for Special Leave to Appeal (C) No.23599 of 2018) decided on 08.01.2020.**

5. As regards the proposed amendment by way of adding the counter-claim in the written statement, it is pertinent to mention here that concededly, the issues have already been framed in the said civil suit. In

Ashok Kumar Kalra (supra), Hon'ble Supreme Court, while relying upon the observations made by its three Judges' Bench for answering the reference as made in the said case, has observed that "*the counter-claim cannot be filed after the framing of the issues.*" In the light of these observations, it is explicit that the proposed amendment to the extent of filing/adding the counter-claim in the written statement, is not permissible.

6. So far as the proposed amendment in the initially filed written statement, besides the filing/addition of the counter-claim in the same, is concerned, it is again worth-while to mention here that in para No.2 (para-wise reply) therein, the defendants have categorically asserted that the Settlement Officer has already settled the dispute in respect of the suit land in the proceedings under Section 42 of the Act of 1948 and by way of the proposed amendment, they simply want to incorporate the details of the afore-said order and are not introducing any fresh plea or defence in the written statement. Keeping in view these facts and also the facts that the above-said order is, undisputedly, a part of the official record and that the same would be relevant and material for the just and proper adjudication of the real controversy between the parties to the civil suit, this Court is of the considered opinion that the proposed amendment to the afore-said extent deserves to be allowed but subject to payment of Rs.10,000/- as cost.

7. As a sequel to the fore-going discussion, the instant revision petition is partly allowed subject to payment of the above-said cost and the impugned order is set aside to the extent of the rejection of the prayer qua the proposed amendment in the written statement (excluding the addition of

counter-claim) and this petition is partly dismissed while upholding the impugned order so far as it pertains to the rejection of the prayer as made by the defendants to allow them to amend the written statement by adding the counter-claim in the same.

May 18, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>