

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CR-7844-2017

Date of decision: 29.11.2022

VED PRAKASH

..Petitioner

Versus

SMT. KANTA DEVI AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manpreet Singh Longia, Advocate
for the petitioner.

Mr. Jaideep Verma, Advocate
for respondent No.1 to 3.

ANIL KSHETARPAL, J(Oral)

The petitioner herein is the defendant in a suit filed by the plaintiff for passing a decree for a separate possession by way of partition of the property. The partition of a house and a *Bara* has been sought. The plaintiff claims that the aforesaid property is a joint property between the parties. The petitioner (defendant No.1 in the suit) while contesting stated that the suit has been filed just to waste the precious time of the Court and the same is liable to be dismissed.

When the plaintiff appeared in evidence, she has stated as under:-

“it is correct that a compromise has been affected between the parties to the suit and it is also correct that according to the said compromise I have given share in Khasra numbers and defendants got the share in the suit property in the Lal Lakir of the Village Abadi. It is correct that the share given in the Khasra no. by the defendant from their share is in my possession. I have filed partition proceedings before the court of Sub-Registrar Rupnagar. It is wrong to suggest that the said partition proceedings before the court of sub registrar Rupnagar.....

..... I do not know what compromise was affected between myself and Narinder Singh defendant No.3. I

have not array Narinder Singh party to the present suit.....”

The petitioner's application for permission to amend the written statement has been dismissed on the ground that the plaintiffs have already closed their evidence and defendant No.1 did not assert regarding the alleged compromise which is now sought to be added by amending the written statement.

This revision petition has been filed challenging the correctness of order passed by the Civil Judge (Senior Division), Rupnagar, on 11.09.2017, while dismissing the said application.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

On the one hand, the learned counsel representing the petitioner while referring to the deposition of the plaintiff submits that the petitioner wants to add the factum of a settlement between the parties carried out with the intervention of the respectables, whereas, on the other hand, the learned counsel representing the plaintiffs contend that at this stage, the amendment should be not allowed.

The plaintiffs while appearing in evidence have admitted that there was a settlement between the parties. The suit is for the partition of the alleged joint property. Such suits are normally decreed unless the defendant successfully proves that there was a prior partition or settlement between the parties by the mutual consent. The petitioner has failed to make necessary assertions with regard to a settlement between the parties arrived at on 27.11.2009. However, the plaintiff has admitted some sort of settlement.

In *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another* 2022 SCC online SC 1128 and *Varun Pahwa v. Renu Chaudhary* (2019) 15 SCC 628, the Supreme Court has held that if the amendment to the pleadings are necessary for the proper adjudication of the case, the rules of procedure should not hinder the process of justice as the same are the handmaid of justice.

Keeping in view the aforesaid facts, the impugned order dated 11.09.2017, is set aside. The petitioner is permitted to amend the written statement subject to payment of cost of Rs.5,000/-.

Needless to observe that after the amended written statement has been filed, the plaintiff shall get an opportunity to file the rejoinder and lead further evidence, if any in support of his claims.

All the pending miscellaneous applications, if any, are also disposed of.

November 29th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*