

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

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CR No. 3550 of 2019 (O&M)

Date of decision: 03.08.2022

Prem Nath Sharma

...Petitioner

Versus

Rajiv Kumar Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Kanwal Goyal, Advocate
for the petitioner.

Mr. Anil K. Sharma, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 10.05.2019 (Annexure P-1), passed by the trial Court vide which an application filed by the petitioner/defendant for amendment of the written statement was dismissed.

Brief facts of the case are that the petitioner/defendant, who is an unfortunate father, aged about 80 years, is facing litigation at the hands of his own sons, who are respondents/plaintiffs. The respondents have filed a suit for partition claiming themselves to be a co-sharer of the property in dispute i.e. a house and have also prayed for a decree of separate possession and permanent injunction. The petitioner/father appeared and filed his written statement highlighting the fact that when the petitioner has filed the petition before the Sub Divisional Magistrate, Ludhiana, being appellate authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the respondents have made a statement, on the basis of which,

the said petition was disposed of. The proposed amendment reads as under:

“One order was passed by Shri Paramjit Singh, PCS, Appellate Authority under Maintenance Act, 2007 cum S.D.M. Ludhiana (East) on 27/09/2016 in which it has clearly been mentioned that the plaintiff has made statement before that court in the proceedings titled as "Prem Nath Vs. Rajiv Sharma" to the effect that they will remain in occupation of the property on the first and second floor of the building and the defendant and his wife who are residing on the ground floor of the building shall remain in occupation that portion of the building till they remain alive. In View of the said order and the statement made by the plaintiff in that proceedings, the present suit having been filed by the plaintiff for partition of the suit property is not maintainable.”

Learned counsel for the petitioner submits that the amendment will not change the nature of the written statement and it is just to apprise the Court to come to a just and fair conclusion not only about the conduct of the respondents/plaintiffs but also about the undertaking given by them before the competent authority and it will not cause any prejudice to the right of the respondents.

Learned counsel for the petitioner has referred to a judgment of this Court rendered in **2018 (4) PLR 355 Swaran Singh @ Bittu vs. Harpreet Kaur**, wherein the amendment was allowed by observing that a perusal of the record would show that no prejudice is going to be caused to the respondent in that case.

Learned counsel for the respondents has raised an objection that since this fact was in the knowledge of the petitioner, when he was filing the original written statement, the application seeking amendment in

the written statement has rightly been dismissed by the trial Court, however, it is not disputed that the respondents have given some undertaking before the SDM, Ludhiana, being the competent authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

After hearing learned counsel for the parties, I find merit in the present petition.

Admittedly, it is the case of the respondents/plaintiffs that the petitioner is their father and they are seeking a decree of partition by way of separate possession as well as permanent injunction. Qua the same property, on an earlier occasion, the respondents/plaintiffs have given some undertaking before the competent authority under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, therefore, they cannot resile from the same and proposed amendment will not change the stand taken by the petitioner in any manner, rather it will elaborate his plea.

Accordingly, finding that no prejudice is going to be caused to the right of the respondents/plaintiffs, the present petition is allowed and the impugned order is set aside. The petitioner is allowed to amend his written statement, as proposed.

03.08.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No