

Pulkit

...Petitioner

versus

Santosh Kumari and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Avnish Mittal, Advocate for the petitioner.

Mr. Atul Jain, Advocate for respondent No.1.

None for respondent Nos.2 to 4.

Mr. PeeushGagneja, Advocate and

Mr. Harpal Singh, Advocate for respondent No.5.

B.S. Walia, J. (Oral)

1. Prayer in the petition under Article 227 of the Constitution of India is for setting aside order Annexure P/7 dated 22.07.2021, passed by the learned Appellate Court dismissing application Annexure P/5 dated 21.01.2021, filed by the petitioner/defendant No.6, for amendment of the written statement.

2. Learned counsel contends that the plaintiff/respondent No.1 filed a suit for partition of the suit property claiming to be daughter of deceased, Kanhiya Lal, having 1/6th share in the properties left by her father. Further relief of permanent injunction was also prayed for. Suit filed by plaintiff/respondent No.1 was contested by some of the defendants by filing written statement and a detailed written statement was filed by the petitioner/defendant No.6, whereby all the averments

made in the plaint were denied and prayer was made for dismissal of the suit. After framing of issues and leading of evidence, suit filed by plaintiff/respondent No.1 was dismissed by the learned trial Court by passing a detailed judgment and decree. However, plaintiff/respondent No.1 filed an appeal against the dismissal of the suit and the same is pending before the learned first Appellate Court. Petitioner/defendant No.6 moved an application under Order 6 Rule 17 of CPC, for amendment of the written statement pleading that some of the properties could not be partitioned and since the proposed amendment was legal and formal in nature, therefore, no loss was going to be caused to the plaintiff/respondent No.1, especially in view of subsequent development in law, whereby amendment in Section 6 of the Hindu Succession Act, 1956, had been made applicable retroactively. Learned counsel contends that the learned Appellate Court failed to appreciate that the amendment sought by the petitioner/defendant No.6 being regarding the nature of the property which could not be partitioned, the amendment went to the very root of the case and was likely to effect the rights of the parties, therefore, on the basis of the aforementioned ground alone, the amendment ought to have been allowed by the first Appellate Court, particularly in view of the fact that the amendment prayed for was legal and formal in nature besides the petitioner/defendant No.6 is not required to lead any evidence and proposed amendment would not in any manner change the basic nature of the suit, therefore, no prejudice would be going to be caused to the plaintiff / defendant No.1, if the amendment was allowed. Learned

in **Rajesh Kumar Aggarwal and others vs. K.K. Modi and others 2006 (2) RCR (Civil) 577**, to contend that it is mandatory for the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties without going into the correctness or falsity of the case as set up in the amendment. Learned counsel further relies upon the decision of a Coordinate Bench in **Mani Raj vs. Firm Radha Krishan Siri Niwas, G.T. Road, Hansi, Hisar and others 2003 (1) RCR (Civil) 125**, to contend that amendment in written statement is to be allowed on liberal basis to decide the main question in controversy between the parties.

3. Learned counsel for respondent Nos.1 and 5 do not dispute that the proposed amendment goes to the root of the case and does not change the basic structure of the case nor it would prejudice the interest of plaintiff/respondent No.1 in any manner in view of the retroactive amendment of Section 6 of the Hindu Succession Act, 1956. Learned counsel contend that in the circumstances, plaintiffs/respondent Nos.1 and 5 have no objection if the impugned order is set aside and the amendment prayed for is allowed.

5. In view of the position noted above and in order to ensure that the main question in controversy between the parties is determined in view of retroactive amendment to Section 6 of the Hindu Succession Act, 1956 as also in view of the statement of learned counsel for the plaintiff/respondent Nos.1 and 5, the instant revision petition is allowed and order Annexure P/7 dated 22.07.2021, passed by the learned

rejecting the application under Order 6 Rule 17 of CPC, for amendment of the written statement is set aside and the amendment prayed for allowed.

(B.S. Walia)
Judge

01.08.2022
rajesh

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