

125 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4083-2022
Decided on:-22.09.2022

Satish

....Petitioner...

VS.

Jagdish Lal and ors.Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sourabh Goel, Advocate,
Mr. Tej Bahadur, Advocate and
Ms. Samridhi Jain, Advocate,
for the petitioner.

HARKESH MANUJA J. (Oral)

By way of present revision petition, the petitioner has challenged the order dated 26.07.2022 (Annexure P-9) passed by learned Additional District Judge, Hisar, whereby an application filed on his behalf regarding amendment of written statement at the appellate stage, has been dismissed.

2. The facts leading to the present revision petition are that respondent No.1-plaintiff filed a suit for possession by way of partition of the alleged joint property. In the said suit, the petitioner being defendant No.1 raised the plea of his exclusive ownership based on the sale deeds and court decrees. It would be relevant to submit here that even the petitioner-defendant No.1 appeared as DW-1 in the suit and reiterated his stand taken in the written statement regarding his exclusive ownership over the suit property. The learned trial court vide judgment and decree dated

20.12.2019, passed a decree for partition in favour of the parties to the suit holding them to be co-owners as per their respective shares defined therein, thereby, disbelieving the stand of the petitioner-defendant No.1 of he being the exclusive owner.

3. Aggrieved against the judgment and decree passed by the learned trial court, the petitioner-defendant No.1 filed an appeal. During pendency of the first appeal, the petitioner-defendant No.1 moved an application for seeking amendment of his written statement on two counts. In the amendment application, it was pleaded that the petitioner-defendant No.1 may be permitted to take the alternate plea that he has become owner by way of adverse possession and further defendant No.6-Manwanti, who happened to be his sister was not entitled for grant of any share, having renounced the world and taken “sanyas” as well as having severed her relationship with the family, long back. The application for seeking amendment of the written statement was contested by respondent No.1. The learned First Appellate Court vide impugned order dated 26.07.2022, has dismissed the aforesaid application.

4. In the present revision petition, it has been contended on behalf of the petitioner that though the petitioner-defendant No.1 claimed his exclusive possession over the suit property based on the sale deeds as well as court decrees, however, in the alternate, he can always raise the plea of having become owner by way of adverse possession. He further submits that once defendant No.6 Manwanti had already renounced the world by taking “sanyas”, she could not have been assigned any share in the suit for partition.

5. I have heard learned counsel for the petitioner and have gone

through the records but I do not find any merit in the contention raised in the aforesaid submissions.

6. As regards, the share having been assigned to defendant No.6-Manwanti, it may be relevant to submit here that she was arrayed as defendant No.6 in the suit itself, which has been contested tooth and nail by the petitioner-defendant No.1 through out. The petitioner being the real brother of defendant No.6-Manwanti, was very much within the knowledge of all these facts, which are now sought to be introduced by way of carrying out amendment in the written statement. Once, no such facts were pleaded in the original written statement filed way-back in the year 2016, no such facts cannot be permitted to be pleaded by way of carrying out amendment in the written statement and, that too, at the appellate stage. By virtue of decree having been passed in favour of defendant No.6 by the learned trial court, now, substantial rights have arisen in her favour which cannot be put to question by introducing altogether new facts requiring a denovo trial. In fact, all these facts were already within the knowledge of the petitioner and the amendment now sought to be introduced is not based on any new or subsequent facts. Regarding plea of the petitioner-defendant No.1 having become owner by way of adverse possession in the alternate, I am not convinced even. Once, the petitioner claims himself to be owner of the suit property by virtue of registered sale deed and the courts decree based on permissive possession, he cannot be permitted to take the plea of adverse possession at the appellate stage.

7. In my view, the application for seeking amendment appears to have been filed just for the purpose of delaying the partition proceedings initiated at the instance of respondent No.1. Therefore, finding no merit in

the present revision petition, the same is thus, dismissed.

8. Pending application(s), if any, shall also stand disposed of.

22.09.2022
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(HARKESH MANUJA)
JUDGE

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