

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-4269-2019 (O&M)

Date of Decision: 17.10.2023

Sukhdev Singh

....Petitioner

VERSUS

Balwinder Singh Sandhu and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. R.S.Sidhu, Advocate,
for the petitioner.

Mr. A.P.S. Sandhu, Advocate with
Mr. Ashish Kaushik, Advocate,
for respondents No.1 and 2.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner/defendant No.2 for setting aside order dated 20.5.2019 (Annexure P-5) passed by the Court of Civil Judge, Junior Division, Tarn Taran, vide which, the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the written statement was dismissed in Civil Suit No.906 of 2014 titled Balwinder Singh and others v. Surjit Singh and others.

2. Brief facts of the case are that the plaintiffs/respondents No.1 and 2 have filed suit for declaration with regard to suit land on the ground that the plaintiffs and defendants No.1, 2 and 4 constitute HUF and are co-parceners while Surjit Singh defendant No.1 is *Karta* of the said HUF which owns ancestral co-parcenary property.

3. The suit was contested by defendants No.1 and 2 who filed written statement wherein averments made in the plaint were denied and it

has been pleaded that the suit land was exclusively owned by defendant No.1 out of which, he got land measuring 10K-2M in exchange from Gian Singh and while another land measuring 11K was purchased by defendant No.1 from Sohan Singh and Karam Singh sons of Bachittar Singh through registered sale deed dated 20.11.1996 for valuable consideration of ₹ 1 lakh. It was denied that the suit land was ancestral in the hands of defendant No.1.

4. On the basis of the rival pleadings of the parties, learned trial Court framed issues and the suit was fixed for evidence of the plaintiffs and thereafter, it was fixed for evidence of the contesting defendants and then suit was fixed for rebuttal, if any and arguments. At that stage, the petitioner filed an application for amendment of the written statement. Same was contested by the plaintiffs and finally, dismissed by the learned trial Court vide order Annexure P-5.

5. I have heard counsel for the parties.

6. Counsel for the petitioner, while assailing the impugned order, *inter alia* submits that the averments made by the plaintiffs in their plaint were already denied by the contesting defendants in their original written statement; that, however, in order to clarify the pleas already taken by the contesting defendants in their written statement, the contesting defendants filed an application for amendment of the written statement to further explain the said pleas. Counsel for the petitioner further submits that it has already been pleaded in the written statement that defendant No.1 got 10K-2M out of the suit land in exchange from Gian Singh and purchased another 11K out of the suit land for valuable consideration from Sohan Singh and Karam Singh sons of Bachittar Singh through registered sale deed dated

20.11.1996. It is further submitted that by way of amendment, the petitioner intends to further clarify that the land which was sold to defendant No.1 by Sohan Singh and Karam Singh came to the said vendors from their father Bachittar Singh who purchased the same from Gurnam Kaur along with some other land and that on the death of Bachittar Singh, the said land came to his 3 sons namely Surjit Singh, Sohan Singh and Karam Singh by way of succession and that the above said land was self-acquired land of Bachittar Singh and in division, specific area as described in the application fell to the share of Sohan Singh, Karam Singh and Surjit Singh respectively. Counsel for the petitioner further submits that if the proposed amendment is allowed, it is not going to prejudice the plaintiffs and further, the proposed amendment is necessary for determining the real question in controversy and the proposed amendment is not time barred in any manner. So, prayer is made that the present petition be allowed in the interest of justice for just decision of the suit.

7. Present petition is opposed by counsel for respondents No.1 and 2. He, while supporting the impugned order, *inter alia* contends that the application for amendment of the written statement was filed at the belated stage without any due diligence with regard to the facts which the petitioner was fully aware of, when the trial commenced with the settlement of issues. Counsel for the contesting respondents further submits that grant of permission to amend the written statement at this stage when the suit is fixed for final arguments, would cause serious prejudice to the plaintiffs. So, prayer is made that the present petition be dismissed. In support of his contentions, counsel for the contesting respondents has placed reliance on the decision of Hon'ble Supreme Court in **Ajendraprasadji N. Pande and**

another v. Swami Keshavprakeshdasji N. and others 2007 (1) RCR (Civil) 481.

8. I have considered the submissions made by the counsel for the parties.

9. Admittedly, the plaintiffs filed civil suit in 2014 wherein the written statement was filed by the contesting defendants including the petitioner. Thereafter, the issues were framed and the trial commenced and both the parties led their evidence and when the suit reached its final stage, the petitioner filed an application seeking amendment of the written statement. From the perusal of the said application, it could be easily made out that at the time of filing the original written statement, the petitioner was already well aware of the facts which he intended to plead by way of amendment of the written statement. In the application moved under Order 6 Rule 17 CPC, nothing has been pleaded or contended to the effect that despite exercise of due diligence, said facts could not be brought to the notice of the Court at the earlier stage when the original written statement was filed. Admittedly, the amendment in the written statement has not been sought in order to bring to the notice of the Court some events which took place subsequent to the filing of the original written statement or came to the knowledge of the petitioner at a later stage. It lacks bonafide and legitimacy.

10. For the foregoing reasons, this Court is of the view that the petitioner who has failed to prove due diligence, is precluded by proviso to order 6 Rule 17 CPC, from seeking relief by asking for amendment of the written statement. Learned trial Court was right in dismissing the application filed by the petitioner seeking amendment of the written

statement.

11. Consequently, the present revision petition is hereby dismissed
being devoid of merits.

(KARAMJIT SINGH)
JUDGE

October 17, 2023
Paritosh Kumar

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