

2024:PHHC:018415
**143 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-1846-2023 (O&M)
Date of decision: 09.02.2024

Nanak Singh

....Petitioner

Versus

Gurbaksh Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jaskaran Singh Sibia, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein is the defendant no.3 in a suit filed by the plaintiff (respondent) Gurbaksh Singh for grant of decree of permanent injunction. He assails the correctness of the order passed by the trial court on 15.11.2022, whereby his application for permission to amend the written statement has been dismissed. A perusal of the order shows that the application has been dismissed on the ground that it has been filed after commencement of the trial and the facts were already in the knowledge of the applicant and an engagement of a new counsel is not a valid ground for permitting him to file the written statement.

2. In this case, despite service of the notices, the respondents have not entered appearance.

3. Learned counsel representing the petitioner contends that the trial court has erred in dismissing the petitioner's application as the trial of the case has not commenced. He submits that defendant no.1 was proceeded against ex-parte on 17.04.2021. Thereafter, in the month

of May, the court, on appreciation of the pleadings, framed the issues. However, on an application filed by defendant no.1, the ex-parte proceedings were set aside vide order dated 22.05.2023 and the defendant no.1 has now filed the written statement. He submits that the issues will have to be framed again after the written statement has been filed by defendant no.1. It is further contended by the petitioner that originally a joint written statement was filed by defendant no.2 to 4. However, complete particulars of the stand taken by them was not incorporated. He submits that the father of the plaintiff and defendants died in the year 1979 and an oral partition took place between all the coparcenors, resulting in the division of the property by metes and bounds. Therefore, defendant no.3 constructed his house and a cattle shed by spending a huge amount.

4. This Court has considered the submissions made by the learned counsel representing the petitioner.

5. It is evident from the reading of the impugned order that the trial court has dismissed the application on the following grounds:-

a) The proposed amendment has been sought after the commencement of the trial.

b) The facts were already in the knowledge of the petitioner and engagement of a new counsel is not a valid ground to permit the amendment.

6. As already noticed, ex-parte proceedings against defendant no.1 have been set aside. Resultantly, the proceedings in the suit have been relegated to the same position as on 17.04.2021. He has filed the

written statement. Now, issues will have to be framed again in accordance with the written statement. In such circumstances, the trial of the case has not commenced. Furthermore, the case is at the initial stage. Moreover, from a perusal of the original written statement filed by the defendants, it is evident that it lacks complete particulars.

7. Now the petitioner wishes to assert that on account of oral partition, the property, which fell in his share, has been utilized for constructing his house.

8. Consequently, the impugned order passed by the trial court is not sustainable. Hence, the same is set aside. The application filed by the petitioner for grant of permission to amend the written statement is allowed.

9. The revision petition stands allowed.

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

09.02.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE