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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-6779-2019
Date of decision : 15.10.2024

Har Chand @ Hari Chand and others

... Petitioners

Versus

Bimla Devi and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Rishabh Chaudhary, Advocate and
Mr.Amardeep Sandhu, Advocate
for the petitioners.

Mr.Manoj Kumar Taya, Advocate
for respondents no.1 to 5.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 30.09.2019 passed by the Additional Civil Judge (Sr.Div.), Karnal, vide which the application dated 11.09.2019 under Order 6 Rule 17 CPC for amendment of written statement filed by the petitioners has been dismissed.

2. Learned counsel for the petitioners has submitted that in the present case, the petitioners had filed an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the written statement in which they wanted to plead the fact that about 15 years prior to the filing of the application dated 11.09.2019, a family settlement had arrived between

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the parties and different properties were given to different persons as per the same. It is submitted that the said fact with respect to the family settlement was brought to the notice of the counsel but the same was not mentioned in the written statement on account of inadvertence. It is prayed that the said application be allowed and the impugned order, rejecting the application under Order 6 Rule 17 CPC be set aside.

3. On the other hand, learned counsel for the respondents has opposed the present revision petition and has submitted that in the written statement dated 04.08.2018 filed to the amended plaint, the petitioners-defendant no.1 to 5 had denied the family settlement of the year 2010 set up by the plaintiffs and had not raised any plea with respect to there being any settlement much less in the year 2004 as is now sought to be incorporated. It is submitted that the said plea would be thus in contradiction to the plea taken in the earlier written statement. It is further submitted that in the present case, issues were framed on 17.01.2017 and the date on which the application for amendment under Order 6 Rule 17 CPC was made, three witnesses were examined completely and examination-in-chief of 4th witness of the plaintiffs was also recorded and the trial had commenced and the plea sought to be raised was, even as per case of the petitioners, in their knowledge and thus, it could not be stated that in spite of due diligence the same could not be raised before the commencement of the trial. It is submitted that the impugned order has rightly been passed and the present revision petition being meritless deserves to be dismissed.

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4. This Court has heard the learned counsel for the parties and has perused the paper book.

5. The respondents-plaintiffs had filed a suit in the year 2016 to the effect that the transfer deed dated 03.02.2016 executed by defendant no.1 in favour of defendant no.2 and the subsequent mutation entered into was illegal, null and void, ineffective, inoperative and not binding on the rights of the plaintiffs. A further prayer for permanent injunction was also made along with other prayers. It was the case of the plaintiffs-respondents that the suit property measuring 0 kanal 18 marlas was ancestral property in the hand of defendant no.1 and in the year 2010, a dispute arose between the parties and in order to resolve the dispute, an oral family settlement was arrived at and as per the same it was decided that after the death of defendant no.1, the property would be distributed among Prem Singh, predecessor in interest of the plaintiffs, and defendants no.2 to 5. It was further the case of the plaintiffs that Prem Singh died on 21.11.2015 and thereafter defendants no.1 and 2 joined hands and executed a transfer deed dated 03.02.2016 in favour of defendant no.2 illegally.

6. In the written statement filed by the present petitioners, the factum of the family settlement of the year 2010 was denied and no plea with respect to any family settlement, much less family settlement having taken place 15 years prior to year 2019, was taken. It is not disputed that the issues in the present case were framed on 17.01.2017 and thereafter, the plaintiff evidence was also led and thus, the trial had commenced. It is after the commencement of trial that the present petitioners-defendants moved an

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application under Order 6 Rule 17 CPC seeking amendment of the written statement to plead the fact that 15 years prior to 11.09.2019, i.e., in the year 2004, a family settlement had taken place. The trial Court had dismissed the said application vide order dated 30.09.2019 by observing that the said application was barred in view of the proviso of Order 6 Rule 17 CPC and that it could not be said that the said plea could not be raised in spite of due diligence inasmuch as in case there was any such alleged oral family settlement 15 years prior to filing of the application in the year 2019, then the same should have been in the knowledge of the petitioners and the said aspect should have been mentioned in the written statement.

7. A perusal of the proviso to Order 6 Rule 17 CPC would show that the same specifically provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of trial. In the present case, it cannot even remotely be said that the plea with respect to there being a family settlement 15 years prior to the date of filing of application dated 11.09.2019 i.e., in the year 2004 could not be raised at the time of filing of the written statement. Thus, the amendment sought is hit by proviso to Order 6 Rule 17 CPC. Moreover, in the written statement filed on behalf of the defendants, in paragraph 4, the plea raised by the petitioners–defendants was that there was no family settlement in the year 2010, as was being alleged by the plaintiffs and there was no plea taken that there was some family settlement which was there.



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8. Keeping in view the above said facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

October 15, 2024.
Davinder Kumar

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