

**SUPREME COURT OF INDIA**

Sarmukh Singh

Vs.

Baldev Singh

C.A.No.4966 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

04.08.2008

**ORDER**

1. Leave granted.

2. These appeals are directed against the judgment and order dated 2.4.2007 passed by a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh whereby and whereunder the Civil Revisions filed by the appellant herein questioning the validity of the orders dated 9.5.2006 and 30.5.2006 passed by the Civil Judge(Junior Division) Ropar were dismissed.

3. The basic fact of the matter is not in dispute. Appellant herein had filed a suit in the Court of Civil Judge,Sr.Divn, Ropar, inter alia, for grant of a decree for mandatory injunction directing the defendant-respondent to demolish and remove the structure raised over the land in suit which admeasured 18 ft. x 28 ft. Appellant claimed to be the purchaser of the said suit land from one Har Kaur daughter of Nand Singh.

4. A written statement was filed in the said suit by the respondent, wherein, inter-alia, it was accepted that Har Kaur was a member of the family and she could make transfer to the extent of her share. Genealogical table of the family had also been disclosed in the written statement.

5. Appellant, however, filed an application for amendment of the plaint in terms whereof a decree for recovery of possession of the suit property was also prayed for. The said application for amendment was allowed.

6. Respondent, thereafter, filed an application for amendment of the written statement purported to be pursuant to the leave granted in his favour by the learned trial Judge, while allowing the application for amendment of plaint filed by the appellant. In the said application for amendment of written statement, however, the respondent did not confine the application to the extent of the averments made in the amended plaint.

7. The respondent not only made new averments but also substituted the genealogy as disclosed in the first written statement in the amended written statement. It had, inter-alia, furthermore denied and disputed that the said Har Kaur could have alienated any property in favour of the plaintiff.

8. The civil revision application filed thereagainst, as noticed hereinbefore, was dismissed by the High Court.

9. Mr. K.B. Sinha, learned senior counsel appearing on behalf of the appellant would submit that the purported application for amendment of the written statement as allowed by the learned trial Judge and affirmed by the High Court, on the premise that the respondents were entitled to do so as the plaintiff himself amended the plaint is wholly untenable in law. It was, furthermore, submitted that, in any event, the defendants could not have substituted one genealogy by the other as a result whereof the source of title of the plaintiff could stand denied and disputed. Learned senior counsel, however, furthermore contends that having regard to the proviso appended to Order VI Rule 17 of the *Code of Civil Procedure*, the said application for amendment of the written statement could not have been allowed as hearing of the suit had commenced.

10. We agree with the learned senior counsel that the application for amendment of written statement could not be treated to be one as additional written statement within the meaning of Order VIII Rule 9 of the Code of Civil Procedure but in our opinion even if the said application is treated to be one filed in terms of Order VI Rule 17 of the Code of Civil Procedure, the same would not mean that by reason thereof any admission made therein is sought to be withdrawn. If a mistake has been committed by the defendants in their original written statement, they were entitled to file an application for amendment thereof.

11. It is, furthermore, well known that an application for amendment of the written statement is to be granted more liberally than an application for amendment of the plaint.

12. We, at this stage, are not concerned as regards the correctness or otherwise of one genealogical table of the family or the other. The parties are required to prove their respective cases before the learned trial Judge and in that view of the matter, we are of the opinion that no case has been made out for our interference with the impugned judgment at this stage, particularly, when plaintiff-appellant has already filed replication to the said amended written statement in terms of the order passed by the learned trial Judge himself.

13. So far as applicability of the proviso appended to Order VI Rule 17 is concerned, in our opinion, the said contention is misplaced as the original suit was filed in the year 2001, whereas the amendment has come into force in 2002. This aspect of the matter is covered by a decision of this Court in State Bank of With the aforementioned observations, the appeals are dismissed. No costs.