

(1990) 12 P&H CK 0009

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2458 of 1990

Hakam Singh

APPELLANT

Vs

Jagir Singh and Others

RESPONDENT

Date of Decision: Dec. 18, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 1, Order 8 Rule 9

Hon'ble Judges: I.S. Tiwana, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

I.S. Tiwana, J.

This petition is directed against the order of the trial Court dated 25th August, 1990, whereby it allowed the Respondent-Defendants to file a joinder to the replication filed on behalf of the Petitioner-Plaintiff. The factual matrix of the case is as follows:

2. The Petitioner filed the present suit to seek permanent injunction restraining the Respondent from interfering in his possession of the suit property. He, however, failed to disclose as to in what capacity he was in possession of that property. The Respondent in their written statement while denying the stand of the Petitioner raised a counter plea that the suit property belonged to Defendant No. 1 and they were entitled to take possession of the same. The Court allowed the petition to file a replication to the written statement in which he pleaded that since the parties were Hindus and were governed by Hindu Law, the suit, property was Joint Hindu Family property and he being a coparcener could not be dispossessed from the suit property. He also maintained that his possession was not permissive and was rather as a co-parcener. This replication was filed by him on 17th February, 1987. During the course of trial, the Respondent filed two applications, respectively, praying that either they should be allowed to amend their written statement to controvert the stand of the Petitioner raised in the replication or they be allowed to file a rejoinder to the replication. The Court has granted the latter prayer of theirs while dismissing

the application for amendment of the written statement.

3. The solitary plea now raised by Shri GiII, the learned Counsel for the Petitioner-Plaintiff, is that the Court has adopted a procedure unknown to law in allowing the Defendants to file a rejoinder to the replication filed by his client. As per his stand, the Respondent cannot file a written statement to the replication which, according to the learned Counsel is in itself a written statement to the additional or the counter claim raised by the Respondent in their written statement. He highlights that strictly speaking a replication unless permitted to be filed by the Court is not even a pleading in view of Order 6, Rule 1 Code of Civil Procedure. He, therefore, urges with some amount of vehemence that no further reply or rejoinder to a replication can thus be allowed to be filed.

4. After giving my thoughtful consideration to the entire matter in the light of the submissions of the learned Counsel for the parties, I, however, find that in making these submissions the learned Counsel" appears to be oblivious of the provisions of Order 8, Rule 9, Code of Civil Procedure; which provide that in a given case the Court may upon such terms as it think fit require a written statement or additional written statement from any of the parties. This rule invests the Court with the widest possible discretion and enables it to accept a written statement or rejoinder at any stage of the trial. It is no doubt true that no replication can be filed by the Plaintiff TO a written statement as a matter of right, but once it is so permitted to be filed it becomes part of the pleadings and in a case in which written statement raises a counter claim or a set-off is pleaded the Plaintiff should normally be entitled to file a replication to the same. Similarly, in a case in which replication raises new pleas, which did not form part of the plaint, the Defendant, to my mind, should be entitled to file an additional written statement or rejoinder to the same. It may be that in normal course the Plaintiff cannot be allowed to raise a new plea in the replication yet if such a replication is allowed to become a part of the pleadings by the Court then, in all fairness, the Defendant too should be provided an opportunity to controvert the new pleas taken in the replication. As already pointed out, to permit or not to permit the filing of such a rejoinder, being clearly within the jurisdiction and discretion of the trial Court, the impugned order does not call for interference in revision. It is neither a case of failure or exceeding the exercise of jurisdiction nor of exercising a discretion unjustly or illegally. The petition is thus dismissed with costs which I determine at Rs. 500/-.