

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 1202 of 2013
Date of Decision: 27.3.2015.**

Giani Ram

.....Petitioner

Versus

Om Parkash and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Manoj Sood, Advocate
for the petitioner.

Mr. Shiv Kumar, Advocate
for respondents No. 1 to 4.

None for respondent No. 5.

SABINA, J.

Petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 22.1.2013 (Annexure P-3) whereby application moved by the petitioner for permission to amend the plaint, was dismissed.

I have heard the learned counsel for the parties and have gone through the record available on the file carefully.

Petitioner has filed suit for declaration with consequential relief of permanent injunction. Petitioner and respondents No. 1 to 4 are closely related to each other. Defendants were proceeded *ex parte* before the Trial Court. Petitioner moved an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ('CPC' for short) and under Order 1 Rule

10 CPC. By way of amendment, petitioner wanted to incorporate the subsequent event of execution of Will and wanted to explain certain averments already made in the plaint. By way of amendment, petitioner also wanted to implead Ms. Kavita as a defendant as the Will had been executed in her favour as well as the other defendants by Ram Kishan, father of the petitioner during the pendency of the suit. The application moved by the petitioner could not be opposed as the defendants were *ex parte*. The fact as to whether the subsequent event was relevant or not, can be gone into by the Trial Court at the time of decision of the suit. However, the amendments sought by the petitioner were liable to be allowed.

In the facts and circumstances of the present case and more so when the defendants were already *ex parte*, the Trial Court should have allowed the application moved by the petitioner seeking amendment of the plaint as well as the application moved by the petitioner under Order 1 Rule 10 CPC.

Accordingly, this petition is allowed. Impugned order dated 22.1.2013 (Annexure P-3) is set aside. Consequently, the application moved by the petitioner Annexure P-2 under Order 6 Rule 17 and under Order 1 Rule 10 CPC, is allowed.

**(SABINA)
JUDGE**

March 27, 2015
Gurpreet