

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 2515 of 2015 (O&M)

Date of decision : 10.4.2015

Jagtar Singh

... Petitioner

VS

Santa Singh and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. S. D. Sharma, Senior Advocate with
Mr. Anupam Sharma, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 21.3.2015 passed by the learned Court below, whereby the application filed by respondent no. 1 / plaintiff for amendment of the plaint was allowed at the Lower Appellate stage.

Learned court for the petitioner submitted that he is aggrieved only against the directions issued by the learned Court below that parties will not be allowed to lead any evidence and not against the order allowing the amendment. He submitted that the petitioner deserves to be afforded an opportunity to lead evidence to prove the fact that the suit itself was highly belated as the execution of the Will was well within the knowledge of respondent no. 1/ plaintiff. Evidence is required to be led for that.

After hearing learned counsel for the petitioner, I do not find any merit in the submissions made.

In the case in hand, respondent no. 1/ plaintiff filed the suit for declaration claiming ownership of the suit property and further declaring that Will dated 8.5.1990 executed by late Ujjal Singh was forged.

The trial Court set aside the Will. However, the suit was dismissed as the plaintiff being not in possession had sought not the possession. The suit for declaration simpliciter was held not to be maintainable. While filing the appeal against the judgment and decree of the

trial Court, the plaintiff filed application seeking amendment of the plaint, which was allowed by the learned Court below permitting respondent no. 1/ plaintiff to add the relief of possession in the plaint. The relief being type of consequential, the pleadings and evidence being already on record, the learned Court below did not permit the parties to lead fresh evidence.

The petitioner is not aggrieved against the order passed by the learned Court below allowing the amendment of the plaint. His only grievance is that opportunity to lead evidence should have been granted and that too with reference to the Will, the validity of which was challenged in the suit. In my opinion, the petitioner does not deserve to be granted any opportunity to lead evidence considering the fact that on the issue of validity of the Will whatever evidence the parties sought to lead has already been led. The amendment has been allowed by the learned Court below only for adding the relief of possession in case the declaration prayed for is granted. Under these circumstances, no liberty can be granted to the petitioner to lead evidence with reference to the validity of the Will.

The learned Court below has not committed any error in not permitting either of the party to lead evidence and simpliciter allowed the amendment of the plaint for adding the relief of possession.

Dismissed.

10.4.2015
vs

(Rajesh Bindal)
Judge