

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

CR No. 4323 of 2015 (O&M)

Date of decision : 10.7.2015

Satish Kumar (deceased) through LRs

... Petitioner

VS

Ravi Kumar and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. R. D. Bawa, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 16.3.2015 passed by the learned Court below whereby the application for amendment of plaint filed by respondent nos. 1 to 4 was allowed.

It is a case in which parties to the dispute are family members. The property of late Ganpat Rai is in dispute. One son and family member of another son are on one side, whereas one son, one daughter and family of another daughter are on other side. The plaintiffs pleaded Will dated 12.2.1974, whereas the defendants by admitting the execution of that Will pleaded that there was another Will dated 26.4.1976. It was further pleaded that thereafter the property in dispute was transferred to one of the son namely Satish Kumar vide sale-deed dated 4.10.1977. The amendment was sought by the plaintiffs to the affect that the property was joint Hindu family property and hence, late Ganpat Rai could not execute the Will. The amendment having been allowed by the learned Court below, the order has been impugned in the present petition.

Learned counsel for the petitioner submitted that the issues in the present case had been framed on 28.10.2013, hence, the trial has commenced. Any application filed thereafter could not be entertained. However, he submitted that no evidence has been led till date.

After hearing learned counsel for the petitioner, I do not find any reason to interfere with the impugned order. Parties to the dispute are family members. Let the lis be settled once for all. No doubt, the issues have been framed, however, the evidence in the suit is yet to be led. Even if earlier the Will was pleaded, which according to the plaintiffs, was giving share to all the legal heirs, however, once the defendants have pleaded a Will not bequeathing property in equal share to all the defendants and further there is transfer of property in favour of one of the son Satish Kumar, in case the plaintiffs are seeking to amend the suit to claim that the property being ancestral and late Ganpat Rai did not have any right to execute the Will, the pleas cannot be said to be mutually destructive to disallow the amendment.

For the reasons mentioned above, the present petition is dismissed.

10.7.2015
vs

(Rajesh Bindal)
Judge