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

**CR No.5216 of 2014 (O&M)
Date of decision: July 27, 2015**

Hari Ram

.....Petitioner

Versus

Punama and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Hitesh Kapila, Advocate
for the petitioner.

None for respondents No.2 and 4.

Mr. C.L. Verma, Advocate
for respondents No.5 to 8.

SABINA, J

Petitioner has filed this petition challenging the order dated 10.07.2014, whereby, application under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) moved by the petitioner for permission to amend the plaint, was dismissed.

Learned counsel for the petitioner has submitted that the petitioner had filed suit for declaration to the effect that defendant No.1 was only restricted owner of the suit land and had no right to sell the same. Petitioner had also challenged the sale-deed executed by defendant No.1 in favour of defendants No.5 to 8. However, during the pendency of the suit, defendant No.1 died on 22.06.2013.

Defendant No.1 had executed Will dated 16.11.2012 in favour of the petitioner and defendant No.2. Hence, it was necessary to amend the plaint by pleading the Will dated 16.11.2012.

Learned counsel for the respondent, on the other hand has opposed the petition and has submitted that suit could not be permitted to be amended at a belated stage.

In the present case, petitioner has filed suit for declaration that defendant No.1-Prem had restricted interest in the suit property and could not sell the same during his lifetime. Petitioner had also challenged the sale-deed executed by defendant No.1 in favour of defendants No.5 to 8. During the pendency of the suit, Prem (defendant No.1) died on 22.06.2013. Now, by way of amendment, petitioner wants to plead that defendant No.1 had executed a Will dated 16.11.2012 in favour of the plaintiff and defendant No.2. Consequently, petitioner wants to claim the relief of declaration that he had become owner of the share of defendant No.1 alongwith defendant No.2 on the basis of Will dated 16.11.2012. Since the amendment had been sought by the petitioner on account of subsequent events, the same was liable to be allowed by the trial Court. Trial court fell in error while dismissing the application on the ground that it would change the nature of the suit. In fact, subsequent event after the filing of the suit, could be pleaded by the plaintiff by way of amendment of the plaint. The Will executed by defendant

No.1 was to become operational only after his death. Hence, the amendment has been sought by the plaintiff in the plaint after the death of defendant No.1.

Accordingly, this petition is allowed. Impugned order dated 10.07.2014, whereby, application moved by the petitioner under Order 6 Rule 17 CPC was dismissed, is set aside. Consequently, application moved by the petitioner under Order 6 Rule 17 CPC (Annexure P-4) is allowed.

**(SABINA)
JUDGE**

July 27, 2015

mahavir