

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

C.R. No. 8527 of 2014 (O & M)

Date of decision: 28.01.2015

Gurdit Singh and others

....Petitioner(s)

Versus

Jasbir Kaur and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Sherry K. Singla, Advocate,
for the applicant-petitioners.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 1976-CII of 2015

Application for placing on record order dated 01.04.2013 as
Annexure P-10 is allowed, subject to all just exceptions.

The said Annexure is taken on record only for the purpose of
deciding the present revision petition.

C.R. No. 8527 of 2014

Challenge in the present revision petition filed by defendant no.
1 is to the order dated 21.10.2014 (Annexure P-9) whereby, the Additional
Civil Judge (Sr. Divn.), Talwandi Sabo has allowed the application for
amendment of the plaint and the plaintiffs have been permitted to challenge
the Will dated 30.12.2002 executed by Bakshish Singh in favour of the
present petitioner no. 1 and also the Will dated 08.05.2006 executed by
Amrik Singh, father of the present petitioner and the plaintiffs-respondents.

Counsel for the petitioner has vehemently submitted that by
earlier amendment allowed on 01.04.2013, there was never any challenge
raised to the Will dated 30.12.2002 and, therefore, the plaintiffs were not

entitled to amend the plaint and the suit has been pending since 21.02.2011. The dispute, as noticed, is between the plaintiffs-sisters of the present petitioner on one hand. The initial challenge was to the transfer deeds dated 11.01.2008 and 27.02.2008 executed by their father Amrik Singh in favour of the present petitioner, the son and the mutation proceedings dated 30.04.2008.

In the written statement filed, the petitioners no. 1 and 2 took the defence that there was a registered Will executed by the grand father Bakhshish Singh and the Will was never cancelled or revoked and thus, petitioner no. 1 was owner and in possession by virtue of the said registered Will. In the meantime, Amrik Singh-defendant no. 2, father of the plaintiffs and defendant nos. 1 and 3, died and an application was filed for amendment of the plaint alongwith the relief of adding the widow Sukhraj Kaur as party as the share of the parties had changed on account of the death of Amrik Singh. The application was contested by the present petitioner nos. 1 and 2 and no mention was made of any Will dated 08.05.2006 executed by Amrik Singh. The trial Court allowed the application on 01.04.2013 (Annexure P-10) by keeping in mind the fact that the issues had not been framed and the trial had not commenced. An amended plaint was filed, in reply to which, the petitioners filed written statement and set up a registered Will dated 08.05.2006 in favour of petitioner no. 1. Replication was also filed whereby, plea was that both the Wills were illegal and the property was Joint Hindu Family property.

Thereafter, the second application for amendment was filed by the plaintiffs seeking challenge to the said Will on the ground that they were false, forged and fabricated and not binding and without competence.

Resultantly, an application for amendment has been allowed keeping in mind the fact that the share of the plaintiffs changed due to the death of defendant no. 2 and the execution of the Will dated 08.05.2006 was not in the notice of the plaintiffs and the suit being at the initial stage, no prejudice was going to be caused to the defendants. Accordingly, the present revision petition has been filed.

The law regarding amendments at the initial stage is well settled, principle being that the dispute between the parties should be effectively adjudicated upon and the parties should not resort to repeated litigation. The factum of change of share of share has already been noticed in the above discussion. The right of the plaintiffs to seek their share in the property on the death of Amrik Singh cannot be disputed. Their right to file second suit also could not be disputed by the counsel. If by virtue of the amendment, the whole dispute inter se the shares within the family can be adjudicated upon, the amendment was thus necessary and has been rightly allowed at the initial stage itself. As noticed, issues are yet to be framed. In such circumstances, the argument raised that there was lack of diligence and the first Will was well in their knowledge on the filing of the first written statement cannot be taken into account since it is not a case where the evidence has commenced and the amendment was sought thereafter. The case of the plaintiffs is that the property being Joint Hindu Family property and could not be willed away has also been raised which would have to be adjudicated upon on merits.

Accordingly, in such circumstances, no fault can be found in the well reasoned order passed by the Trial Court and the present revision petition is dismissed. However, it is made clear that anything said herein is

only for the purpose of deciding the present revision petition and would not affect the merits of the case.

28.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE