

CR No.913 of 2015

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

**CR No.913 of 2015
Date of decision:10.02.2015**

Smt. Rajesh and another

...Petitioners

Versus

Karan Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Virendra Rana, Advocate,
for the petitioners.

Rakesh Kumar Jain, J.

The plaintiffs have challenged the order dated 20.01.2015, dismissing their application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of plaint alleging that at the time of filing the suit, due to inadvertence, it could not be pleaded that “*and the Will dated 10.10.2012 is null and void, ab-initio because defendant no.3 was of unsound mind at the time of execution of the aforesaid Will*”. They also prayed to amend the prayer clause to the effect that “*the Will dated 12.10.2012 is null and void, ab-initio because defendant no.3 being of unsound mind, was not competent to execute the said Will*”.

The trial Court has found that the application has been filed at

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the belated stage. The suit was filed for seeking a decree for declaration and permanent injunction, alleging that defendants no.1 and 2 are taking undue advantage of the mental disorder of defendant no.3 and violating the terms and conditions of the family settlement. The defendants set up a Will dated 12.10.2012 in the written statement but in spite of disclosure of their case, the amendment application has been filed after the evidence was closed and the case was fixed for rebuttal evidence and arguments.

Counsel for the petitioners has vehemently argued that the amendment sought is not going to change the nature of the suit and can be allowed even at this stage.

After hearing learned counsel for the petitioners and examining the record, I am of the considered opinion that there is no error in the order of the Court below because the petitioners are now trying to challenge the validity of the Will on the ground that it could not have been executed by defendant no.3 as he was a person of unsound mind. This pleading, sought to be added in the plaint, will change the entire nature of the suit because the plaintiffs would ask for opportunity to lead evidence to prove that the testator of the Will was a person of unsound mind or when the Will was executed, he was not in his sound disposing mind.

Once the defendants had set up the Will dated 12.10.2012 to deny the right, title or interest of the plaintiffs over the suit property claimed on the basis of family settlement, it was for the plaintiffs to have challenged the Will at that time by amendment of the suit and not when both the parties have already led their evidence and the case has been fixed for rebuttal

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evidence and arguments.

In view of the above, I do not find any merit in the present revision petition and hence, the same is hereby dismissed.

February 10, 2015
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(Rakesh Kumar Jain)
Judge