

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

Civil Revision No.968 of 2015

Date of decision:08.05.2015

Tarlochan Singh son of late Sh. Chinta Singh, resident of VPO
Lasara, Tehsil Phillaur, District Jalandhar.

... Petitioner

versus

Inderjit Singh son of late Shri Rajinder Singh son of late Shri Chinta
Singh, resident of VPO Lasara, Tehsil Phillaur, District Jalandhar,
and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Zorawar Singh Chauhan, Advocate,
for the petitioner.

Mr. Hemen Aggarwal, Advocate,
for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. In a suit for declaration with reference to a property obtained under a Will from one Smt. Karam Kaur on the basis of instrument dated 05.07.1991 in respect of 4 kanals 12 marlas, the plaintiff has sought for inclusion of yet another item which is not a subject of Will but a property which is in the hands of the defendant. The amendment was objected to as not part of the Will and bringing

a whole new relief which was unconnected to the relief originally asked.

2. The application was allowed and the revision petition is brought by the defendant on a plea that the amendment has no connection whatever to the original reliefs claimed. The counsel for the plaintiffs-respondents points out to me the written statement which has taken a plea referring to several items of properties which jointly belonged to the plaintiffs and the defendant and that the suit filed without all those joint properties was not maintainable. The plaintiff has himself filed a rejoinder reiterating that his own suit is only with reference to the property under a Will and, therefore, he cannot be compelled to join other properties which are not in the Will. However, he takes the very same objection in the statement as a basis to support the amendment that out of several items objected to by the defendant as not having been included, the plaintiff restricts the claim only with reference to one item which is in the possession of the defendant.

3. I make no sense out of either a plea by the defendant that the other joint properties mentioned in the statement ought to have been included in the suit as contended in para A in the preliminary objections. This itself has been a basis for including of an amendment of one of the items. I must observe that the defendant has literally allowed for leverage to the plaintiff to come with an

amendment. The amendment is meaningless, the same way his written statement is meaningless in so far as it objects to the frame of the suit.

4. While the suit could have been instituted in the first instance with reference to the properties in Will and not covered under the Will by taking up appropriate pleas regarding the source of title for each one of the items, I do not think there is a need for allowing for such an amendment which ought to be normally confined only to the instances which a party was not aware at the time of institution of suit or the plaint suffers from some defects which would require to be corrected through an amendment. A situation of a subsequent event could also afford a justification for amendment. None of these fallabilities existed to justify amendment. I, therefore, set aside the order passed allowing for amendment but still give liberty to the plaintiff to file any independent suit with reference to the property which he seeks to include through this amendment. The defendant's own objection that the suit is not competent without including the other properties which are allegedly held in common as set forth in preliminary objections is also directed to be removed so that there is no adjudication necessary by virtue of this court's order as regards the maintainability of suit for alleged non-inclusion of the properties held in common, as set forth in para A of the preliminary objections.

5. The impugned order is set aside and the civil revision is allowed but subject to the observations made above.

(K.KANNAN)
JUDGE

08.05.2015
sanjeev