

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

**CR No.1737 of 2015 (O&M)
Date of decision:04.04.2016**

Manpreet Kaur ... Petitioner
Vs.

Harpal Kaur and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Avnish Mittal, Advocate
for the petitioner.

Mr. S.K.Jain, Advocate and
Mr. Aasheem Jain, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the dismissal of the application under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint.

Mr. Avnish Mittal, learned counsel appearing on behalf of the petitioner-plaintiff submits that suit is for claiming declaration that she along with defendants is joint owner qua her share on the premise that the property left behind by father, who, died intestate, is inherited as per the respective share on the basis of natural succession, whereas, the respondent-defendants set up a Will. He has drawn the attention of this Court to the relief clause, whereby, it

has been mentioned that sale deed, much less, alleged Will set by the defendants is beyond $\frac{1}{4}$ share. The amendment sought to be incorporated for challenging the subsequent mutation and sale deed dated 06.06.2005, whereas, suit was filed on 10.01.2009. He further submits that petitioner will not lead any further evidence and amendment sought to be incorporated is specific in nature, thus, prays for setting aside of the impugned order.

Mr. S.K.Jain, learned counsel appearing on behalf of the respondent-defendants submits that factum of sale deed was in the knowledge of the petitioner-plaintiff and therefore, the application, which was filed at the belated stage, i.e, on 08.01.2015 when the case reached plaintiff's evidence stage, was not maintainable. He further submits that petitioner failed to plead and aver that "despite exercise of due diligence", amendment could not be sought, thus, ex facie barred by law of limitation. In case, the petitioner-plaintiff succeeds in the suit, consequential acts/facts, i.e., mutation and sale deed are automatic and suit arrived at argument's stage and there is no interim stay vis-a-vis further proceedings. Though interim order has been passed by this Court on 11.03.2015, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that since the petitioner-plaintiff has undertaken not to lead any further evidence, I am of the view that amendment sought to be incorporated will not amount to

altering the nature of the suit. There is direct connection with the relief sought in the suit and the amendment. The other party can be compensated in terms of costs.

With the aforementioned rider, I deem it appropriate to allow the application for amendment with a direction to the petitioner-plaintiff that she will not lead any further evidence qua amendment. The trial Court shall decide the suit on the basis of such averments. Accordingly, the impugned order is set aside subject to payment of costs of ₹5,000/-.

Revision petition stands allowed.

(AMIT RAWAL)
JUDGE

April 04, 2016
savita