

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4662 of 2016

Date of Decision: 25.07.2016

Smt. Anita and Another

---Petitioners

versus

Smt. Suman and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.P.K. Kataria , Advocate for the petitioners.

Rekha Mittal, J.

The present petition filed under Article 227 of the Constitution of India, directs challenge against order dated 19.05.2006 (Annexure P-1) passed by the trial Court whereby application filed by respondents No.1 and 2/plaintiffs for amendment of the plaint has been allowed.

Smt. Suman and Shivani filed a suit for declaration with consequential relief of permanent injunction against Smt. Anita and others including Jeet @ Ajit Singh son of Sh. Fateh Singh. During pendency of the suit, Sh. Jeet @ Ajit Singh passed away. The plea of the respondents/plaintiffs, in the suit initially filed, was that the relinquishment deed dated 7.2.2006 executed by Jeet @ Ajit Singh, husband of plaintiff No.1 and father of plaintiff No.2, was illegal as land in the hands of Jeet @ Ajit Singh was ancestral and he was a drug addict. Jeet @ Ajit Singh died

on 03.08.2013 and the application for amendment was filed to add that Jeet @ Ajit Singh executed a Will in July, 2013 witnessed by brother of plaintiff No.1 and Sanjay Kumar one of the friends of Jeet @ Ajit Singh. The said Will was found from a trunk lying in the old house in village Dahar, Tehsil and District Panipat on 22.11.2014.

The respondents/plaintiffs prayed for amendment of the plaint to claim relief on the basis of Will and delete name of defendant No.3 (Jeet @ Ajit Singh) by amending para No.6F, 7, 8 and the relief clause.

To assail the impugned order, counsel for the petitioners has three-fold submissions to make. The first submission is that as in the present suit, the respondents/plaintiffs have merely laid challenge to the relinquishment deed and the question of ownership of the suit property is not involved, pleading the Will is not necessary for complete and effective adjudication of the matter in controversy. Another submission is that the Will propounded by the respondents is the result of forgery and thus cannot be allowed to be impleaded. In addition, it is submitted that as other class-I heirs of Jeet @ Ajit Singh are not a party in the present proceedings, the question of inheritance cannot be decided more particularly in the circumstances that respondents are not the widow and daughter of said Jeet @ Ajit Singh.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

Be that as it may, it is an undisputed position in law that at the time of disposal of an application for amendment of pleadings, the Court cannot examine merits of the facts sought to be pleaded by way of amendment. That being so, contention of the petitioners that the Will in question is a forged and fabricated document, at this stage of the proceedings, is misconceived and deserves to be rejected.

With regard to the plea that the question of ownership of the suit property is not subject matter of the suit filed by the respondents/plaintiffs, the said contention is untenable in view of the averments set up in the plaint whereby the respondents have claimed themselves to be owner of the suit property after getting the relinquishment deed set aside. Further, as the respondents have claimed that they be declared owners in possession of the suit land, claim raised by the respondents qua ownership is required to be decided in case their challenge to the relinquishment deed is accepted by the Court.

The mere fact that the other class-I heirs of Jeet @ Ajit Singh are not party to the present proceedings is not sufficient to deny the prayer for amendment as any such person(s) can be impleaded as a party either at the behest of parties already before the Court or *suo motu* by the Court by invoking the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure, 1908.

In view of the above, I find myself unable to accept the

submissions made by counsel for the petitioners that the order impugned suffers from any infirmity much less the same being perverse or absurd, warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. No order as to costs.

(Rekha Mittal)
Judge

July 25, 2016
'D.Gulati'

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No