

129

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

**CR No. 6633 of 2016
Date of Decision: 03.10.2016**

Promila Devi @ Promila ManhasPetitioner

Vs

Khuswant Rai and ors.Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunil Agnihotri, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

[1] Petitioner has assailed order dated 05.08.2016 passed by Additional District Judge, Hoshiarpur, whereby an application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the written statement was declined.

[2] Brother of the petitioner, namely Khuswant Rai, filed a suit for declaration to the effect that he was joint owner in possession of land measuring 42 Kanals 15 Marlas of land. Will dated 01.06.2005, executed in favour of defendants No. 3 and 4, was claimed to be illegal, null and void. Consequent mutation No. 6364 entered and sanctioned on the basis of aforesaid Will was also claimed to be illegal. Petitioner being defendant No. 2 had interest in the property akin to the plaintiff (her brother).

[3] The written statement filed by defendant No. 2 was suggestive of the fact that in fact she supported the cause of the plaintiff in the suit. The suit was dismissed vide judgment and decree dated 21.07.2014. Plaintiff, Khuswant Rai filed first appeal before the lower Appellate Court. During the pendency of the appeal, the petitioner/defendant No. 2 filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the written statement on the ground that the dispute was in respect of inheritance of deceased, Vidya Devi, who was mother of the plaintiff/appellant as well as petitioner and her two sisters i.e. defendant Nos. 3 and 4, who were beneficiaries under the Will. Defendant No. 2 was ex-parte before the trial Court. Petitioner claimed that she was very much interested in prosecuting the litigation, but in fact she had no knowledge about her pleadings before the trial Court. She came to know about judgment and decree of the trial Court only in the second week of September 2014, when she received summons from the lower Appellate Court.

[4] Petitioner also asserted that after inspection of the record, she came to know that the written statement filed by her before the trial Court was not proper. She intended to incorporate para No. 4A in the written statement in the following manner :-

“That the alleged Will dated 01.06.2005 is a fabricated and manipulated document. The said Will is a result of undue influence and misrepresentation played by defendant No. 3 and 4 upon Vidya Devi. In fact the

defendant No. 3 and 4 got executed a general power of attorney on 01.06.2005 from Vidya Devi in favour of defendant No. 3 and it seems that under the garb of execution of said attorney, the defendant No. 3 and 4 got manipulated the alleged Will dated 01.06.2005 purported to be executed from Vidya Devi was old aged lady and infirm during those days. Thus, the alleged Will dated 01.06.2005 cannot be said to be the act of free Will and mind of executants.”

[5] The prayer for amendment of written statement was declined by the trial Court vide order dated 05.08.2016 and the same has been assailed in the present revision petition.

[6] I have heard learned counsel for the petitioner.

[7] Learned counsel for the petitioner submitted that by way of amendment in question, no prejudice will be caused to the beneficiaries of the Will. Apparently, petitioner being defendant No. 2 was co-defendant with the beneficiaries of the Will i.e. defendant Nos. 3 and 4. They are none else but sisters of the petitioner/defendant No. 2 and the plaintiff. The interest of the petitioner was at par with the plaintiff.

[8] Plaintiff having remained unsuccessful before the trial Court, has already filed an appeal before the lower Appellate Court. By way of amendment, only a cause which has already been espoused by the plaintiff, is sought to be introduced. Since the petitioner being defendant No. 2 in the suit, did not prefer any

counter-claim before the trial Court nor any cross-objection was filed before the lower Appellate Court, therefore, the claim of the petitioner would be falling in the shoes of plaintiff/appellant. The plaintiff can succeed on the basis of her natural succession in case, Will executed by Vidya Devi in favour of defendant Nos. 3 and 4 is nullified.

[9] Precisely for the relief in question, plaintiff/appellant after having remained unsuccessful before the trial Court, has filed an appeal before the lower Appellate Court. In any case, the amendment of the written statement at this juncture would not sponser any independent case so as to dislodge the Will dated 01.06.2005 executed by Vidya Devi in favour of defendant Nos. 3 and 4. Even otherwise, since the suit of the plaintiff was dismissed by the trial Court, the interest of the petitioner was very much akin to that of the plaintiff, therefore, no amount of explanation at this stage would facilitate the petitioner to bring about any other actionable pleadings or evidence in favour of herself or the plaintiff. The proposed amendment in question is highly belated. The case remained pending for more than four years before the trial Court. It would be highly imaginary to note that the petitioner would come to know about the proceedings only in September 2014. The written statement filed by the petitioner/defendant No. 2 did not disclose any allegation of forgery or fabrication against the Will in question, rather the averments of the plaint were endorsed. The petitioner did not appear in the main case.

[10] Taking into consideration facts and circumstances of the case, I am unable to endorse the submissions made by learned counsel for the petitioner.

[11] In view of aforesaid, this revision petition is totally found to be devoid of merit and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

03.10.2016
sumit

Whether Reasoned/Speaking	Yes/No
<i>Whether</i> Reportable	Yes/No