

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No. 7219 of 2015 (O&M)  
Date of decision:16.12.2016

Dani

... Petitioner

Vs.

Mukhtiara and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Harsh Garg, Advocate  
for the petitioner.

Mr. Manjeet Singh, Advocate  
for respondent No.1.

**AMIT RAWAL J. (Oral)**

The petitioner-plaintiff is aggrieved of the impugned order dated 23.09.2015, whereby, the application moved by defendant No.4 seeking amendment of the written statement, has been allowed.

Mr. Harsh Garg, learned counsel for the petitioner-plaintiff appearing on behalf of the petitioner-plaintiff submits that the suit at the instance of plaintiff, daughter of Mukhtiara seeking declaration and permanent injunction to the effect that she is owner to the extent of 1/3<sup>rd</sup> share out of total land measuring 139 kanals 11 marlas, had been filed. During the pendency of the suit, Mukhtiara had died. Two applications for bringing on record his LRs, one on the basis of the Will dated 07.03.2011 and another on the basis of the natural succession, were filed. Both the aforesaid applications were allowed. Thereafter, at the instance of the

petitioner-plaintiff, an application under Order 14 Rule 5 CPC was moved for striking off the issue erroneously framed qua Will dated 7.03.2011, onus of which was placed upon the defendants. The same was allowed, vide order dated 21.02.2015 . Thereafter, an application in hand for amendment of the written statement by propounding the Will is not sustainable as it tantamounts to *de novo* of trial, for, the suit had already reached the final stage, thus, the order under challenge is not sustainable in the eyes of law. There is no compliance of expression “despite exercise of due diligence.”

Per contra, Mr. Manjeet Singh, learned counsel appearing on behalf of respondent No.1 submits that revision petition is not maintainable as the impugned order itself reflects concession given by the defendant that he will not lead evidence qua proposed amendment and in this regard, evidence had been led, therefore, the revision petition is liable to be dismissed.

I have heard learned counsel for the parties and appraised the paper book.

In view of the fact that once evidence qua Will aforementioned had been led and even issue had been struck off, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in ***P.Purushottam Reddy vs. M/s Pratap Steels Ltd. 2002(2) RCR (Civil) 70***, the parties are alive to the situation, *dehor* of the fact, issue has not been framed. Once the statement has been suffered as indicated above, apprehension of the plaintiff vis-a-vis *de nova* of trial is wholly misplaced.

Accordingly, the finding in the impugned order qua defendant No.4 would not lead evidence cannot be said to be erroneous, much less perverse.

Revision petition stands dismissed.

December 16, 2016

savita

(AMIT RAWAL)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |