

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

Civil Revision No.1339 of 2017

Date of Decision: 03.11.2017

Garib Dass Petitioner
Vs
Rikhi Ram and anotherRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Inderjeet Singh, Advocate
for the petitioner.

Mr. Arvinder Arora, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J.

[1]. Petitioner is aggrieved of order dated 09.02.2017 passed by Civil Judge (Senior Division), Naraingarh vide which prayer for amendment of plaint in terms of Order 6 Rule 17 CPC was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for declaration to the effect that plaintiff is owner of the land shown by letters 'ABCD' in the plaint. Will dated 25.07.2003 allegedly executed by Ram Dia in favour of the defendant No.1 was claimed to be null and void and also a sale deed dated 04.05.2012 executed by defendant No.1 in favour of defendant No.2 to be null and void. Consequential relief of possession by way of mandatory injunction was also sought, directing defendant No.2 to put the

plaintiff in actual physical possession of the suit property by demolishing any type of construction, boundary wall and rooms etc.

[3]. Tulsi Ram had five sons namely Ram Prasad, Ram Dia, Jeet Ram, Pritam Singh and Rounki Ram. Defendant No.1 is son of Ram Prasad. Defendant No.2 is vendee under defendant No.1. Ramdia died issueless and he allegedly executed Will dated 25.07.2003 in favour of defendant No.1/Rikhi Ram. Plaintiff is grandson of Jeet Ram. Pritam Singh also died issueless, who has allegedly executed Will in favour of the plaintiff. Rounki Ram is still alive.

[4]. During course of arguments, it has been transpired that Ram Prasad and Jeet Ram pre-deceased Ram Dia. Therefore, at the time of death of Ram Dia, only Pritam Singh and Rounki Ram were alive who would have succeeded the estate of Ram Dia. By way of proposed amendment, plaintiff seeks to incorporate factum of registered Will dated 20.02.2006 allegedly executed by Pritam Singh in his favour. On the other hand, defendant No.1 has relied upon Will dated 25.07.2003 executed by Ram Dia in his favour. Defendant-Rikhi Ram has further sold the land to defendant No.2-Santosh Kaur.

[5]. Evidently, Rounki Ram has not been made party to the

civil suit. At the time of death of Ram Dia, Pritam Singh and Rounki Ram were alive. If the execution of Will dated 25.07.2003 in favour of defendant No.1-Rikhi Ram is not proved, then the property would have devolved upon Pritam Singh and Rounki Ram at the time of death of Ram Dia in equal proportions. If the Will executed by Pritam Singh in favour of the petitioner is proved, then the entitlement of the petitioner would be confined to the share of Pritam Singh alone without having any adverse effect on the entitlement of Rounki Ram, but in case Will executed by Pritam Singh in favour of the petitioner is not proved, then Rounki Ram being real brother of Pritam Singh would be having additional entitlement in respect of estate of Pritam Singh and in such eventuality, *lis* between the parties cannot be appropriately decided without impleading Rounki Ram as a necessary party to the controversy.

[6]. The prayer has been made for amendment of the plaint seeking to incorporate plea of registered Will dated 20.02.2006 executed by Pritam Singh in favour of the plaintiff/petitioner. The said Will was shown at the time of cross-examination of defendant Rikhi Ram for the first time to the counsel of the plaintiff.

[7]. The factual details as noticed above were made in the application for seeking amendment of the plaint, but Rounki

Ram was not sought to be impleaded in the suit. It is a settled principle of law that all *bona fide* amendments should be allowed, but in the instant case, the amendment, even if allowed will be of no consequence as the *lis* cannot be appropriately decided in the absence of Rounki Ram as discussed in the preceding part of the order.

[8]. The entitlement of the parties would be adversely affected in the event of not proving the execution of Will in question. The proposed amendment would in any case change the entitlement of the parties to the *lis* and the original plea would become inconsistent. The trial of the case has reached at the fag end and may lead to *de novo* trial. The observation made by the trial Court in respect of liberty granted to the plaintiff to withdraw the suit and to file fresh suit by taking new plea about existence of Will in accordance with law would not be illegal as in the present suit besides the anomalous situation as depicted above, necessary parties are also not before the Court despite the trial having reached at the fag end.

[9]. In view of above, I deem it appropriate not to interfere in this revision petition and the same is accordingly dismissed.

November 03, 2017

(RAJ MOHAN SINGH)
JUDGE

Atik

Whether speaking/reasoned Yes/No

Whether reportable Yes/No