

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

**CR No. 2280 of 2014 (O&M)
Date of Decision: August 01, 2017**

Dharambir

..Appellant(s)

Versus

Budhi and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rakesh Kaundal, Advocate
for the petitioner.

Mr. Johan Kumar, Advocate
for respondent nos.1 to 4.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 20.02.2014, passed by the Additional District Judge, Palwal who dismissed the application filed by defendant no.1 seeking amendment of the written statement.

It is necessary to deal with brevity the case presented for scrutiny and make a short shrift. A suit was filed in May 2008 by Budhi and others against Dharambir. The suit was contested and after a complete trial it was decreed in June 2011. An appeal was preferred by Dharambir (present petitioner) and during the pendency of the appeal he filed an application seeking permission to amend the written

statement. The 1st Appellate Court considered the reply of the respondent and dismissed the application on 20.02.2014.

The petitioner wanted to amend the written statement and take a plea that after the pronouncement of the judgment in 2011 they had come to know that Rattan Lal his father had executed a registered Will on 09.09.1977 in favour of his three sons.

An objection was taken by the respondent that no Will was executed and the Will had never seen the light of the day and the application had been filed after the pronouncement of the judgment by the trial Court and when the plaintiff was under cross-examination, a suggestion was put to him that Rattan Lal had executed a Will and the alleged Will was in their knowledge and still they did not take any steps and they could not be allowed to amend the written statement as it would lead to a remand and a re-trial.

I have heard the submission of both the sides. Counsel for the parties have placed on record the pleadings i.e. plaint, the written statement and the judgment passed by the lower Court as well as the cross-examination of Budhi Ram recorded on 19.11.2010.

The counsel for the petitioner submits that the Apex Court in *Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.* **2007(2) RCR (Civil) 830** has held that in the case of amendment of a written statement, the Court should be more liberal in allowing the amendment and since the Will was registered there were no chances that it could have been forged and the Will came to their notice only

after the decision of the case and the Court should have permitted them to amend the written statement and take the plea.

The submission on the other hand is that its a case where the plaintiff has not exercised due diligence and amendment was made in Order 6 Rule 17 CPC and the Proviso is clear and no application for amendment can be allowed after the trial has commenced and the amendment can be permitted only where the Court comes to the conclusion that in spite of due diligence they could not have raised the matter before the commencement of trial. The counsel submits that the defendants are taking a plea at the stage of the appeal, which cannot be permitted. The counsel refers to the cross-examination effected on Budhi Ram and states that the defendants had made a suggestion to Budhi Ram that a Will had been executed by Rattan Lal, meaning thereby that they had notice and knowledge and still did not amend the written statement and they cannot be permitted to amend the written statement now. Reliance was placed upon *Avtar Singh Vs. Tara Rani 2011(1) RCR(Rent) 388*.

It would be relevant to reproduce Order 6 Rule 17 CPC, which reads as under:-

Order 6 Rule 17 CPC

The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the

commencement of trial.

The case set up by the petitioner before the 1st Appellate Court was that the Will had come to their notice only after the decision by the lower Court that their predecessor had executed a Will in 1977 but the cross-examination effected on Budhi Ram plaintiff shows that the plea is false. It was sought to be urged that lawyer had given that suggestion on his own which cannot be accepted. The information and material would have been provided to the counsel by the defendants. The suggestion could not have been made by the counsel on his own. A reading of the cross-examination of Budhi Ram shows that the defendants had knowledge of a fact and it was suggested to Budhi Ram. A time barred claim cannot be allowed to be raised by proposing an amendment which takes away valuable right which has accrued to a party.

In view of the above, it is found that the petition is bereft of any merit and is dismissed.

August 01, 2017

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(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No