

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

225

CR-3941-2014

Date of Decision:04.10.2017

Dalip Singh

.....Petitioner

Versus

Kashmir Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Pardeep Bajaj, Advocate,  
for the petitioner.

Mr.Ravi Malhotra, Advocate,  
for the respondents.

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**RAMESHWAR SINGH MALIK, J.(Oral)**

Feeling aggrieved against the order dated 20.03.2014 passed by the learned trial court, whereby application moved by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure (for short “the CPC”), seeking amendment in the plaint was dismissed, petitioner-plaintiff has approached this Court by way of instant revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

The civil suit filed by the plaintiffs is pending decision before the learned trial court for a period of more than eleven years. Case is still at the stage of plaintiffs' evidence. Written statement was filed within a period

of 2½ months after filing the suit. Defendants filed their written statement on 17.11.2006 and set-up another Will dated 20.10.2005 whereas the suit for declaration filed by the plaintiffs was on the basis of an earlier Will dated 25.06.1985. On conclusion of pleadings of the parties, learned trial court framed the issues. Treating the pleadings of the parties to be correct, plaintiffs started leading their evidence. This was the reason that the learned trial court rightly recorded in the impugned order that the application moved by the plaintiffs under Order 6 Rule 17 CPC was filed at much belated stage of evidence. No contrary material has been pointed out by learned counsel for the petitioner in this regard. Having said that, this Court feels no hesitation to conclude that in such a situation, the application for amendment of the plaint would be hit by the provisions of law contained in the proviso added to Rule 17 by way of Amendment Act No.22 of 2002. It is so said because it is not even the argued case on behalf of the petitioner-plaintiffs that in spite of exercise of due diligence on their part, they were unable to move the application under Order 6 Rule 17 CPC, seeking amendment in the plaint at an earlier point of time. In these circumstances, it can be safely concluded that the learned trial court rightly exercised its jurisdiction to pass the impugned order, dismissing the application for amendment of the plaint filed by the plaintiffs and the same deserves to be upheld.

A bare perusal of the impugned order would further show that the learned trial court has rightly recorded that the application in question moved by the plaintiffs under Order 6 Rule 17 CPC was filed after 3½ years of filing the written statement. In the meantime, not only issues had been framed but the plaintiffs themselves have started leading their evidence also.

No explanation whatsoever is forthcoming as to why the plaintiffs did not move this application for amendment immediately after coming to know about the Will dated 20.10.2005 which was specifically pointed out by the defendants in their written statement filed on 17.11.2006. Under these circumstances of the case, it can be safely concluded that the learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order passed by the learned trial court, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant revision petition stands dismissed, however, with no order as to costs.

October 04, 2017  
seema

(RAMESHWAR SINGH MALIK)  
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No