

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

CR No.4995 of 2016 (O&M).

Date of Decision: 11.01.2017.

Jaspal Kaur

....Petitioner.

VERSUS

Hardial Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Hitinder Singh Lalli, Advocate for the petitioner.

SNEH PRASHAR, J.

The instant revision petition has been filed against the order dated 11.07.2016 passed by learned Additional Civil Judge (Senior Division), Rupnagar, by virtue of which the application under Order VI Rule 17 of the Code of Civil Procedure (for short, "CPC") filed by the petitioner-plaintiff for amendment of the plaint was dismissed.

The facts which need to be referred are that the petitioner-plaintiff filed a suit for declaration to the effect that she is joint owner, co-sharer and in joint possession with the respondents-defendants in the land, detail of which was given by her in the head note of the plaint. She also sought the suit property to be declared as joint Hindu family coparcenary and ancestral property and claimed relief of permanent injunction. Respondent-defendant No.1, who is none else but father of the petitioner, filed a written statement contesting the suit. Similarly, respondents-defendants No.2,3 and 5, who are brother, sister and close relation of the petitioner, also filed a separate but joint written statement refuting the claim

of the petitioner.

Learned trial Court framed issues on rival contentions of the parties. The petitioner examined as many as four witnesses to substantiate her claim. Thereafter, she filed the instant application for amendment of the plaint by virtue of which she sought to challenge the will dated 28.01.1960 and the will dated 01.03.1968 executed by Ganpat and Nika Singh respectively in favour of Hardial Singh-respondent No.1 (father of the petitioner). She alleged that the property, which was bequeathed on the basis of the wills was joint Hindu family property and was thus coparcenary and ancestral property. She alleged that the execution of the wills was not in her knowledge and was also not disclosed by the respondents in their pleadings. It was only during cross-examination of PW4 Joginder Singh that the factum of existence of the wills and the mutations based on the same came to her knowledge.

The application was opposed with vehemence by the respondents. After hearing counsel for the parties, learned trial Court dismissed the application vide the impugned order dated 11.07.2016. Being unsatisfied, the petitioner has preferred the instant revision petition.

The submissions made by Mr. Hitinder Singh Lalli, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner argued that the order passed by learned trial Court dismissing the application for amendment is based on misreading of facts and evidence. The existence of the wills and the mutations sanctioned on the basis of the same was not in notice of the petitioner. None of the respondents in their written statement disclosed about execution of the wills and also did not mention the numbers or dates

April, 2016 the respondents placed on the Court file copy of the wills etc. that the petitioner learnt about the documents. Since the documents are illegal, null and void and inoperative as no will was executed by Ganpat Singh or Nika Singh during their lifetime, the necessity to amend the plaint by the petitioner arose and she accordingly filed the required application.

There appears no force in the arguments of learned counsel for the petitioner. The suit for declaration and as a consequential relief of permanent injunction was filed by the petitioner on 22.05.2009. After the respondents appeared and filed their written statement, issues were framed by learned trial Court on their rival pleadings and the case was fixed for evidence of the petitioner. After examining four witnesses, the petitioner came up with the instant application for amendment of the plaint. With a view to put an end to the practice of filing application for amendment of pleadings belatedly, a proviso was added to Order VI Rule 17 which reads as under:-

“17. Amendment of pleadings— The Court may at any stage of 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 trial commences when the Court applies its judicial mind

to the rival contentions of the parties, determines the contentious issues between them and calls them to adduce evidence in support of the same. It has been held by Apex Court in **Ajendraprasadji N. Pande & Anr. vs. Swami Keshavprakeshdasji N. & Ors., 2007(1) R.C.R. (Civil) 481** that amendment in pleadings cannot be allowed after the trial had commenced. This Court also in **Jaspal Kaur and another vs. Mohinder Singh and others, 2014(9) R.C.R. (Civil) 2935** has held that in view of proviso to Order VI Rule 17 CPC, the amendment of pleadings cannot be allowed unless the party seeking amendment could not have raised the matter before commencement of the trial in spite of exercise of due diligence.

The proviso to Order VI Rule 17 CPC is in a mandatory form. The jurisdiction of the Court to allow an application for amendment after the trial had commenced had been taken away unless the conditions precedent thereof are satisfied viz the Court must come to the conclusion that in spite of due diligence the party could not raise the matter before the commencement of trial.

The facts of the instant case when tested on the above condition would show that the amendment being sought by the petitioner was not such which she could not have raised earlier despite due diligence. The petitioner alleged that the two wills and the mutations sanctioned on their basis were not in her knowledge. However, as observed by learned trial Court in the impugned order, her own witness PW4 Joginder Singh admitted and disclosed the factum of execution of will dated 28.01.1960 by deceased Ganpat in favour of respondent No.1 Hardial Singh and also sanction of the mutation on the basis of the will. When the witness of the petitioner had

does not lie in her mouth to say that she was not aware of the said documents. As regards the stage at which the application was moved is concerned, not only the evidence of the petitioner was over but even the respondents had completed their evidence after which when the case had been adjourned for evidence in rebuttal when the petitioner filed the application for amendment. Even if it is assumed for the sake of argument that earlier the wills were not in the knowledge of the petitioner, but during statement of her own witness PW4 Joginder Singh she had learnt about existence of the said documents, yet she remained silent and did not file any application for amendment till the case reached the stage of rebuttal evidence. The trial is pending for the last seven years. By way of amendment, the petitioner intends to completely change the nature of the suit and reopen the trial.

For the reasons aforesaid, it can be said without hesitation that the proposed amendment of plaint had been rightly declined by the trial Court. Impugned order of the trial Court does not suffer from any perversity, illegality or jurisdictional error so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition is bereft of any merit and is accordingly dismissed.

(SNEH PRASHAR)
JUDGE

11.01.2017.

jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**