

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

**CR NO. 6385 of 2016
DECIDED ON: MARCH 10, 2017**

AMARJIT KAUR & OTHERS

.....PETITIONERS

VERSUS

SURINDER SINGH & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Arjun Veer Sharma, Advocate
 for the petitioners.

 Mr. Gagandeep Singh Chhina, Advocate
 for respondents No.1 to 3.

 None for respondent NO.4.

JASPAL SINGH, J

By virtue of instant petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated August 02, 2016 (Annexure P-1) passed by learned Civil Judge (Jr. Division), Ludhiana whereby, an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'Code') filed by the petitioners for the amendment of the plaint; has been dismissed.

While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioners that petitioner-Amarjit Kaur

has filed the suit for grant for separate possession by way of partition as well as for permanent injunction. Earlier the suit property was owned by Tara Singh s/o Sunder Singh. Defendants had earlier filed a suit against Gurcharan Singh and Amarjit Kaur on the basis of inheritance of property of the above-said Tara Singh and in the said suit, plaintiff-Amarjit Kaur had set up a Will executed by Tara Singh in her favour whereas, her husband Gurcharan Singh had admitted the claim of the defendants in that suit. Gurcharan Singh breathed his last on January 07, 2002 i.e during the pendency of afore-said suit but subsequent thereto, plaintiff-Amarjit Kaur found a registered Will dated June 06, 1983 in favour of Gurcharan Singh, which he could not produce in the earlier litigation. On the basis of the said registered Will dated June 06, 1983 Gurcharan Singh became an absolute owner of the estate left out by Tara Singh and after the demise of Gurcharan Singh, plaintiff-Amarjit Kaur being his widow and class-I heir inherited the property in dispute. Now by way of proposed amendment, petitioners intends to insert the following paragraphs;

“3A That Tara Singh son of Sunder Singh had executed a registered Will bearing Wasika number 268 dated June 06, 1983 in a sound disposing mind in favour of his son Gurcharan Singh regarding the property owned by him. After the death of Tara Singh, Gurcharan Singh became exclusive owner of the property left behind by Tara Singh. After death of Gurcharan Singh, the plaintiffs have inherited the suit property. In view of the said Will defendants have no right, title or interest in the property in suit. They cannot claim any right, title or trust in the suit property and the same was bequeathed by Tara Singh in favour of his son Gurcharan Singh.

3B. That Tara Singh had gone to England in the year 1981. He had sent a power of attorney dated December 10, 1981 which

was duly attested by the Notary Public in favour of Gurcharan Singh son of Tara Singh authorizing him to dispose of the residential house and the workshop owned by him.”

He further contended that the suit is still at its initial stage and the evidence is yet to be recorded, petitioners have discovered the above referred registered Will and the power of attorney from the old papers of Gurcharan Singh, which were not in their knowledge during the course of previous litigation or at the time of filing of the present suit. The said registered documents is neither forged nor fabricated and authenticity of the above-referred documents is beyond doubt. Moreover, the defendants are not likely to be prejudiced in any manner being the suit at its initial stage.

On the other hand learned counsel for the respondents No.1 to 3 has submitted that there is no infirmity or illegality in the impugned award and the same is absolutely in consonance with the settled proposition of law governing the amendment of plaint. They further submitted that proviso appended to order VI Rule 17 of the Code couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. From the order passed by learned trial Court, it is evidence that the respondents had not been able to fulfill the said pre-condition. Accordingly, the dismissal of petition is prayed for.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order as well as pleadings of the parties, this Court is of the considered view that there is no infirmity, illegality or perversity in the impugned order and the same is

absolutely in consonance with the settled proposition of law.

The main question which arises for consideration in the instant revision is as to whether the trial had commenced or not, in the opinion of this Court, it did, as it is well settled by now that the date on which the issues are framed is the first date of hearing. To fortify the afore-said observation, a reference of pronouncement made by Hon'ble Apex Court in the cases of *Vidyabai & others vs. Padmalatha & another; 2009 (1) RCR (Civil) 763* and *Ajendraprasadji N. Pandey and another vs. Swami Keshavprakeshdasji N. and others; 2007 (1) RCR (Civil) 481.*

In the case of *Rajesh Kumar Aggarwal and others v. K.K. Modi and others; 2006 (2) RCR (Civil) 577;* it has been held by Hon'ble Apex Court that no doubt, the Court should allowed amendments that would be necessary to determine the real question of the controversy between the parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side. Thus, it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. Yet, proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise its jurisdiction. Thus, the court's jurisdiction, in a case of this nature is limited.

Adverting to the facts of the case in hand and taking into consideration the proposed amendment in the light of afore-said scope and jurisdiction pertaining to the amendment of the pleadings, this Court is of the considered view that firstly, the proposed amendment is prejudicial to the case set up by respondents-defendants and secondly, the petitioners have failed to

establish that despite of due diligence they can not brought on record the registered Will executed by Tara Singh in favour of Gurcharan Singh, husband of petitioner No.1-Amarjit Kaur. Moreover, in case the amendment is allowed it would change the nature and character of the suit altogether, which is not permissbile under law.

In the light of what has been discussed about, this Court does not find any merit in the instant revision. As such it stands dismissed with no order as to costs.

MARCH 10, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>