

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 6711 of 2017 (O&M)

Date of Decision: 07.11.2017

Charanjit Kaur

.....Petitioner

Versus

Jaswant Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gaurav Sharma, Advocate
for the petitioner.

ANITA CHAUDHRY, J

This revision is directed against the order dated 5.9.2017 (Annexure P-1) vide which the lower Court allowed the application filed by the plaintiffs under Order 6 Rule 17 CPC. The defendant is aggrieved and has assailed the order.

Few facts are essential. The plaintiffs filed a suit in February 2016 pleading that the suit property was ancestral property and the property had devolved from Late Sadhu Singh alias Sadha Singh, their father who had inherited it from his father Ujagar Singh and they being the sons had a share in the property. They also challenged the transfer deed dated 16.6.2015 and the mutation entered on the basis of the transfer deed.

Counsel for the petitioner states that issues were framed on 5.10.2016 and the case was fixed for plaintiffs evidence on 18.1.2017 and the plaintiffs had started their evidence in May 2017 when they moved an application seeking amendment in the plaint and now want to challenge the Will executed by Sadhu Singh on 26.11.2013. It was pleaded that a

mutation was entered in the revenue record during the pendency of the

proceedings on 23.2.2017 and they came to know of the facts only after filing of the suit.

On the last date of hearing, counsel for the petitioner was asked to inform whether they had referred to the Will in the written statement.

Counsel for the petitioner today states that the Will was not referred to in the written statement but urges that the plaintiffs knew about the Will as they were agitating the issue before the revenue authorities.

The main submission on behalf of the petitioner is that the amendment could not be allowed as the trial had commenced and the plaintiffs had failed to state that they could not have raised the issue in spite of due diligence and the application should have been dismissed.

The suit had been filed in February 2016. The defendants had filed the written statement in August 2016. Issues were framed in October 2016. The first date fixed for the evidence of the plaintiff was in January 2017. The mutation on the basis of the Will was entered in the revenue record on 23.2.2017. No reference of the Will was made in the written statement. The plaintiffs thereafter moved an application seeking permission to amend the plaint and also challenge the Will set-up by the defendants.

The Will was allegedly executed on 26.11.2013. It is strange that the defendants did not refer to the Will in the written statement and concealed that fact from the Court but at the same time they were seeking sanction of mutation. Had the defendants mentioned the Will in the written statement, the plaintiffs would have amended the plaint much earlier. Though, the Will was stated to have been executed in November 2013 but it came to the notice of the plaintiffs sometime in the middle of 2016. The

parties. In my considered view, the trial Court was justified in allowing the application allowing the amendment in the plaint. No prejudice has been caused to the defendants.

I find no infirmity in the order.

The petition is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

November 07, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No