

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

CR No. 8052 of 2016(O&M)

Date of decision: 30.11.2017

Bhagwant Singh

.....Petitioner

VERSUS

Harinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajbir Singh, Advocate for the petitioner.

Mr. Ramandeep Singh, Advocate for respondent Nos.1 and 2.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 16.11.2016 (Annexure P-7) passed by the Additional Civil Judge (Senior Division), Samana whereby application filed by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the plaint has been dismissed.

Perusal of the impugned order would reveal that the trial Court has disposed of the application even without correctly appreciating the plea sought to be raised by way of amendment whereby the petitioner wanted to challenge the Will dated 07.03.1963 purported to be executed by Sant Singh son of Bhola Singh in favour of Amar Singh and his wife namely Surjit Kaur to the extent of half share each. The Court below in a short order of less than one page has mentioned twice that by moving the present application, the petitioner wants to set up his claim on the basis of alleged Will but the things are other way round. This fact alone is

sufficient to conclude that the impugned order is the result of non-application of mind, thus, cannot be allowed to sustain.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the matter is remitted to the trial Court for decision of the application afresh after hearing the parties in accordance with law. It is clarified that nothing stated hereinbefore shall be construed as an expression of opinion on merits of the application. As the petitioner was allowed to adduce evidence in terms of proposed amendment vide order passed by this Court on 30.11.2016 , such evidence, if any, already adduced, would not enure to benefit of the petitioner in case the application for amendment is disallowed.

NOVEMBER 30, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no