

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8088 of 2017

Date of Decision: 17.11.2017

Saudagar Singh

...Petitioner

VERSUS

Kashmir Kaur and others

...Respondent

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

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

RITU BAHRI, J. (Oral)

Petitioner has come up in revision against the order dated 24.10.2017 (Annexure P-6) whereby application had been made by plaintiff Annexure P-4 for permission to lead evidence which was closed by order dated 21.09.2017, in which an additional issued has been framed.

Learned counsel for the petitioner submits that application (Annexure P-4) was made by the petitioner was to examine a witness even though his evidence was closed vide order dated 21.09.2017. The suit was pending for the last 5 years and he could examine a witness without challenging the order dated 21.09.2017. A perusal of the order shows that at the time of considering this application, the trial Court had found that the case of the plaintiff was that Gajju son of Jhanda died on 10.08.1977 and he had executed the Will dated 31.08.1973 and no issue regarding the execution of *such Will relied upon by the plaintiff, purportedly executed by Gajju son of Jhanda had not been framed. Hence, the trial Court while exercising his power under Order 41 Rule 5 had framed the additional issue No.1. “Whether Gajju son of Jhanda had executed the Will dated 31.08.1993? OPP” and due opportunity had to be provided to the plaintiff to lead her evidence qua this issue.*

Learned counsel for the petitioner submits that, application Annexure P-4 was filed only to lead evidence and the trial Court had granted opportunity to lead this evidence after framing of issued No.6.

This argument is liable to be rejected as under Order 15 Rule 2 in Code of Civil Procedure, 1908, the Court has power to amend the issue on such terms as it thinks fit. The aforesaid provisions are followed as under:-

5. Power to amend and strike out, issue--(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

In view of the above and on the basis of plaint, the issue No.6 has rightly framed by the trial Court and after framing of issue, due opportunity had been granted to the plaintiff to lead additional evidence in this regard.

So in the light of the discussion, the order dated 24.10.2017 of the Court below does not reflect any material irregularity or perversity which warrant interference. Hence the present revision stands dismissed.

17.11.2017
anil

(RITU BAHRI)
JUDGE