

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

**CR No.3292 of 2017 (O&M)
Date of decision : May 23, 2018**

Smt. Sunehari

..... Petitioner

Versus

Bishan Dutt and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aashna Gill, Advocate for the petitioner.

Mr. Ajay Kumar Kansal, Advocate
for respondent Nos.1 to 4, 8, 10, 11 and 14 to 28.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 10.03.2017 (Annexure P-5) passed by learned Addl. Civil Judge (Sr. Divn.), Jind, vide which the application filed by the plaintiff-petitioner under Order VI, Rule 17 CPC, 1908 for amendment of the plaint was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the plaint shows that the plaintiff-petitioner had filed a suit for declaration to the effect that she is owner in possession of 1/21st share in the suit land and the revenue record is, accordingly, liable to be corrected. She also claimed the joint possession as well as permanent injunction. The claim of the plaintiff-petitioner is based on the averments that she is one of the legal heirs of Sharda (deceased). In this case, when the issues were yet to be framed, an application for amendment of the plaint was filed under Order VI, Rule 17 CPC, 1908 by the plaintiff-petitioner,

claiming that inadvertently and due to illiteracy, she could not challenge the certain mutations i.e. mutation Nos.983 dated 11.07.1983, 1886 dated 30.11.2003, 1468 dated 17.10.1994 and 787 and resultant mutation sanctioned on the basis of judgment and decree dated 09.03.1981. Now, she wants to challenge those mutations also.

The said application was dismissed by the trial Court basically on the ground that in view of the authority delivered in case of ***“Revajeetu Builders and Developers vs Narayanswamy and sons and other” JT 2009 (13) SC 366***, the fresh amendment cannot be allowed, if the amended claim is time barred.

A further perusal of the plaint shows that in the plaint, the plaintiff-petitioner had stated that mutation of succession of Sharda and mutation of judgment and decree dated 01.12.1971 and 09.03.1981 have been sanctioned and are illegal. By way of amendment, only the mutation numbers and dates are to be mentioned.

Learned counsel for the respondents has produced the authority of Hon'ble the Supreme Court of India delivered in case of ***“Revajeetu Builders vs Narayanaswamy & Sons”, 2009 LawSuit(SC) 1429***, which was relied upon by the trial Court and followed by this Court in case of ***“Jagdev Singh vs Gursewak Singh”, 2015 LawSuit(P&H) 3928*** and has pressed that an amendment which is barred by time, cannot be allowed.

I am of the view that whether the claim made in the amendment is time barred or not, is a question of fact, depending upon the facts of each case. In the present case, the succession of Sharda is in dispute. The mutations were already challenged, only numbers were not mentioned. The mutation itself does not confer any title.

The plea has been raised on behalf of learned counsel for the plaintiff-petitioner that the limitation does not come into play in case of succession, which never remain in abeyance. Therefore, basically it will be a mixed question of fact and law “whether the mentioning of mutation numbers in the plaint will be barred by limitation or not? Therefore, the said authorities are not attracted in the present case. The amendment is only explanatory in nature, wherein mutations were mentioned but the mutation numbers were not given in the plaint. Hence, the amendment is necessary for just decision of the case. The application was filed before the framing of the issues and start of the trial.

As such, the impugned order is not sustainable in the eye of law and is set aside. The proposed amendment is allowed with costs of ₹5,000/- payable by the plaintiff-petitioner to the opposite party.

At the present stage, the plaintiff's evidence has already been concluded and one DW1 is stated to be examined-in-chief today. In these circumstances, the plaintiff-petitioner shall also be permitted to produce the said copies of mutation being per se admissible, which are sought to be mentioned and exhibit the same and no further additional evidence will be allowed.

As such, the present revision petition is allowed.

(KULDIP SINGH)
JUDGE

May 23, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No