

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

226

CR No.3645 of 2017(O & M)
Date of Decision:09.01.2018

Vikas Aggarwal and another

...Petitioners

Versus

Manish Aggarwal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.K. Sharma, Advocate
for the petitioners.

Mr. Suman Jain, Advocate
for the respondent.

ANIL KSHETARPAL, J.(Oral)

Defendants-petitioners are in the revision petition against the order dated 05.05.2017 allowing the application under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint and correct the typographical mistake with respect to the date of the Will dated 07.03.2005, which was wrongly mentioned as 05.05.2005.

It is not in dispute that photocopy of the Will was produced in the Court even before filing the written statement on 13.01.2012. Photocopy of the Will bears the date 07.03.2005. However, inadvertently the date of Will was mentioned as 05.05.2005 in the plaint. Subsequently, application for amendment of the plaint was moved so as to correct the aforesaid mistake.

The learned trial Court after considering all aspects of the matter, allowed the application and permitted the plaintiff to correct the aforesaid typographical mistake.

Learned counsel for the defendants/petitioners has vehemently

argued that in view of the provisions of Order 6 Rule 17 of the Code of Civil Procedure, after commencement of trial, the amendment could not be allowed unless it is established that in spite of due diligence, this fact was not in the knowledge of the party.

No doubt, Order 6 Rule 17 of the Code of Civil Procedure provides that amendment of the pleadings cannot be allowed after commencement of trial unless the party seeking amendment, prima facie establishes before the Court that such fact was not in his knowledge. However, present case is entirely on a different aspect.

In the present case, the plaintiff only wants to correct a typographical mistake i.e. the date of the Will executed by his father- Rajinder Aggarwal. Correction of a typographical mistake by amendment of the pleadings is permitted even after the final judgment has been passed as per the provisions of Section 152 and 153 of Code of Civil Procedure. As noticed earlier only the date of the Will is sought to be corrected. Will is a written document signed by the executant. Copy of the Will was produced by the plaintiff when the defendants sought production thereof.

A look at the Will shows that the Will is in fact dated 07.03.2005 and not 05.05.2005. In view thereof, there is no scope for interference in the impugned order passed by the learned trial Court.

09.01.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No