

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

C.R.No.6539 of 2016

Bir Singh

...Petitioner

Versus

Ramhal and Ors.

....Respondents

Date of Order: 07.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jatin Hans, Advocate for petitioner.
Mr. Ramender Chauhan, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned order dated 20.8.2016 passed by learned Civil Judge (Jr. Division), Bhiwani whereby the application filed by the petitioner-plaintiff for amendment of the plaint has been dismissed.

Learned counsel for the petitioner submitted that the petitioner-plaintiff instituted the suit claiming declaration that the will dated 5.12.2011 allegedly executed by the deceased Satbir son of Chander son of Jhunda in favour of defendant No.1 in respect of estate of deceased Satbir was unauthorized, null and illegal with a prayer for permanent injunction restraining defendant No.1 from alienating the moveable and immoveable property standing in the name of Satbir Singh. While the suit was fixed for evidence of the plaintiffs, an application under Order 6 Rule 17 CPC was moved for amendment of the plaint by proposing following amendments:

“5(e). That Ramphal son of Shri Mussadi son of Shri

Jhunda is very clever and cunning person. Satbir (since deceased) was the dead drunkard. He remain under the influence of liquor all the times and defendant No.1 succeed in procuring the alleged will from Shri Satbir under the influence of the same is illegal, null and not binding upon the rights of the plaintiff. Satbir never executed any will of his own free will and in good senses because on account of excess consumption of liquor he has lost his memory and senses and was not having sound deposing mind and was not in a position to execute the will.

Said application was contested by the respondent.

Learned counsel for the petitioner submitted that the trial Court has wrongly declined the application without noticing the fact that the proposed amendment would not change the nature of the suit.

Per contra, learned counsel for the respondent submitted that the application was moved at belated stage and proposed amendment was in the knowledge of the plaintiff and corrected at the first instance. Such a lacuna cannot be permitted to be filled up at the stage of evidence of the plaintiff.

After hearing learned counsel for the parties and perusing the paper book, I find merit in the submissions of learned counsel for the petitioner, for, the amendment sought to be incorporated in addition to the grounds, in my view would not amount to changing the nature of suit. Since the case is fixed at the stage of evidence of the plaintiff and would be leading his evidence, such an amendment can be controverted by the respondent in the amended written statement. The trial Court should have rendered some plausible reason while rejecting the application once the amendment sought is not altering the nature of the suit. It would not take

away the valuable right of the defendant.

In view of aforesaid, present petition is allowed. impugned order dated 20.8.2016 is set aside and the application for amendment is allowed subject to payment of Rs.5000/- as costs to be paid to the counsel representing respondent-defendant No.1 in this Court. Consequently, the petitioner is directed to file amended plaint within a period of 15 days from the date of receipt of certified copy of the order. Amended written statement shall be filed within 15 days thereafter.

May 07, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No