

111.

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

CIVIL REVISION-750-2018

Date of decision:25.04.2018.

KULDEEP KAUR

... Petitioner

Versus

KULDEEP SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Kamaljit Singh Dhillon, Advocate,
for the petitioner.

Mr. Sunny Saggar, Advocate,
for the respondent.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 19.12.2017 (Annexure P-6) passed by learned Civil Judge (Junior Division), Jalandhar, whereby the application filed by the petitioner-plaintiff under Order 6 Rule 17 CPC seeking amendment in the plaint, was dismissed.

Power of attorney filed on behalf of respondent in the court today, is taken on record.

Briefly stated, the petitioner-plaintiff has filed a suit for declaration that she is owner in possession of suit property, as detailed in the plaint, qua the shares of Hari Singh as mentioned in the jamabandi for the year 2002-03 and to the extent of ½ share of the estate left by Hari Singh. It has also been prayed that mutation bearing No.3424 sanctioned in favour of defendant is null and void and not binding upon the rights of the petitioner-

plaintiff.

Respondent-defendant filed a written statement taking various preliminary objections. During the pendency of suit, petitioner has moved an application under Order 6 Rule 17 CPC for amendment of the plaint with an averment that it was only during the evidence led by the defendant, the defendant has propounded a Will dated 04.10.1976 in his favour as executed by Hari Singh (deceased) and the mutation was sanctioned on the basis of the Will in his favour.

Learned counsel for the petitioner has questioned the very execution of the Will dated 04.10.1976 on the ground that the deceased-Hari Singh was not competent to execute the Will, as the property in dispute was ancestral in his hand.

On the other hand, learned counsel for the respondent-defendant has argued that as the petitioner-plaintiff was well within the knowledge about the execution of Will dated 04.10.1976 executed by Hari Singh, therefore, the filing of present application seeking amendment in the plaint at this belated stage is nothing but to complicate the issue and to delay the proceedings pending before the trial Court.

I have heard learned counsel for the parties.

On the basis of arguments led by respective parties and the pleadings therein, this Court finds that the factum of execution of Will dated 04.10.1976 was pleaded for the first time by the defendant while leading his evidence on 16.08.2017, therefore, there is a reason for the plaintiff to move an application seeking amendment in the plaint. No doubt the case is at advance stage of trial and in view of proviso to Order 6 Rule 17 CPC, amendment should not have been allowed, when the issues have been

challenge the Will which is based on the statement of the defendant, this Court does not find that the delay is attributable to the plaintiff.

Be that as it may, without commenting anything on the merits of the case as regards the execution or non-execution of the Will, once it has been pleaded by the defendant that there is a Will in his favour, this Court finds that the petitioner-plaintiff deserves to be afforded one opportunity to amend the plaint only to the extent of the Will. It is made clear that she will get only one opportunity to file the amended plaint and one opportunity to lead evidence.

Under the garb of this amendment, petitioner shall not change the nature of suit in any manner and this would be subject to cost of ₹10,000/- to be paid by petitioner-plaintiff to the respondent-defendant.

With the above observations, present petition stands disposed of.

(HARI PAL VERMA)
JUDGE

25.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No