

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

**CR No.7598 of 2017 (O&M)
Date of decision : February 05, 2018**

Gulwant Kaur

..... Petitioner

Versus

Paramjit Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Bhriugu Dutt Sharma, Advocate for the petitioner.

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)

Heard.

Impugned in the present revision petition is the order dated 06.09.2017 (Annexure P-9) passed by learned Civil Judge (Sr. Divn.), Jalandhar, vide which an application filed by defendant No.1-petitioner for amendment of written statement was dismissed.

It comes out that a civil suit was instituted on 03.08.2013 for declaration that Will dated 15.04.1994 executed by Lajwanti in favour of Jarnail Singh is liable to be set aside. The same is not binding upon the plaintiff and the Will is liable to be set aside. Therefore, the possession by way of partition was also made in addition to filing of permanent injunction. All the defendants appeared in the said case and filed written statement in the year 2014. Thereafter, plaintiff concluded his evidence. Admittedly, the case was at the stage of defence evidence. At the fag end of the case, an application was filed for amendment of written statement to amend para Nos. 1 and 5 of the written statement, so as to plead that Lajwanit had

executed a Will dated 17.05.1994 in favour of Jarnail Singh and that Jarnail Singh also expired and executed a registered Will dated 27.08.2003 in favour of his son Amarjit Singh, who is owner of the property. Further, it was sought to be pleaded that Jarnail Singh became owner of the property after the death of Lajwanti on the basis of Will dated 17.05.1994 and thereafter, Amarjit Singh became absolute owner of the property after the death of Jarnail Singh as per Will dated 27.08.2003.

Learned counsel for the petitioner has argued that a fraud was committed upon the present petitioner, namely Gulwant Kaur, daughter of Jarnail Singh and that her signatures were obtained on the written statement and she did not know that the Will as stated above have not been pleaded. It is further pleaded that in the earlier suit, the plaintiff has himself admitted that Lajwanti was owner of the suit property.

I am of the view that Jarnail Singh was party to the previous litigation between the parties and was succeeded by his legal heirs. All the facts of the previous suit are within the knowledge of the present petitioner. Any admission made in the previous proceedings could be put to the witnesses of the plaintiff to contradict their stand. The provisions of Order VI, Rule 17 CPC were amended in the year 2002 and proviso is added as reproduced under:-

“Provided that no application for amendment shall be allowed after the trial is commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial.”

In this case, the present petitioner was party to the previous suit. She knew everything.

The contention raised before this Court is that it was not pleaded in the application for amendment that a fraud was committed upon the present petitioner and she signed the blank documents. In fact in the application for amendment, it was pleaded that she jointly filed the written statement with the other defendants. Therefore, it cannot be said that despite due diligence, the petitioner did not know the facts, sought to be pleaded in the written statement.

It being so, it cannot be said that facts regarding Will and admission of the plaintiff were not within the knowledge of the present petitioner. Therefore, there is no illegality or infirmity in the impugned order.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

February 05, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No