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

CR No. 8126 of 2015

Date of Decision: 09.08.2018

Swaranjit Kaur and others

....Petitioners

Vs

Gurjant Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate,
for the petitioners.

Mr. Vivek Suri, Advocate,
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioners have assailed the order dated 04.11.2015 passed by Civil Judge (Junior Division), Dabwali vide which the application for amendment of plaint under Order 6 Rule 17 CPC filed by the plaintiffs-respondents was allowed.

2. At the stage of leading plaintiffs evidence, plaintiffs sought to incorporate two amendments. First amendment was in the context of Amarjit Singh having not performed third marriage with defendant No.1.

3. The proposed amendment No.1 was to the following effect as per the application under Order 6 Rule 17 CPC:-

“That in fact, Amarjit Singh never

performed his third marriage with defendant no.1 and out of their wedlock defendants no.2 and 3 never took birth, however, due to communication gap between the plaintiffs and their counsel, the above stated facts could not brought to the notice of the counsel and the counsel of the plaintiff while going through the mutation which was entered regarding the estate of late Amarjit Singh, drafted the plaint and filed the suit in hand on behalf of the plaintiffs. The admission in the plaint is erroneous regarding the marriage of defendant no.1 with Amarjit Singh.”

4. The plaintiffs further sought to incorporate second amendment in respect of earlier Wills dated 02.04.1997, 26.06.1998, 18.02.1999, 17.07.2003 and 20.06.2011.

5. So far as first amendment is concerned, this Court is of the considered view that the admission made in the pleadings cannot be allowed to be withdrawn in normal circumstances.

6. The reference can be made to **Balbir Singh Vs. Jaspal Singh, 2014(1) CCC 784 (P&H), S. Mala Reddy Vs. Future Builders Co-operative Housing Society, 2013(2) CCC 845** and **Ram Niranjana Kajaria Vs. Sheo Parkash Kajaria and others, 2015(4) RCR (Civil) 580**, wherein it was held that by way of proposed amendment, admission in the pleadings cannot be withdrawn. The proposed amendment cannot be held

to be *bona fide*.

7. On the strength of aforesaid ratio of the precedent, this revision petition is allowed to the extent of first amendment sought by the plaintiffs thereby seeking withdrawal of the admission.

8. So far as second amendment is concerned i.e. in respect of incorporation of factum of execution of earlier Wills. Challenge in the suit is the Will dated 26.06.2011 whether the latest Will shall prevail over the earlier Will is to be considered by the trial Court at the relevant stage. The amendment cannot be treated to be malafide at this juncture. The indulgence shown by the trial Court to the extent of accepting the proposed amendment No.2 cannot be faulted with.

9. In view of above, this revision petition is partly accepted to the extent of dismissing the proposed amendment qua amendment No.1, however, qua amendment No.2, this revision petition is dismissed.

09.08.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No