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

**CR No. 8296 of 2016(O&M)
Date of Decision: 08.05.2018**

Baljinder Kaur through LRs **.....Petitioners**

Vs

Surinder Kaur and others **.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K.Shukla, Advocate
for the petitioners.

Mr. Vikas Singh, Advocate
for respondents No. 1 to 3.

RAJ MOHAN SINGH, J. (Oral)

The petitioners have assailed the order dated 17.10.2016 passed by the Civil Judge, Junior Division, Patiala vide which permission to file the amended written statement on behalf of the legal representatives of defendant No. 4 was declined.

Learned counsel for the petitioners submitted that earlier written statement was prepared by the earlier counsel on behalf of defendant No. 4. The said written statement was never signed by defendant No. 4. The said written statement was filed by defendants No. 1 to 3. Defendant No. 4 was

critically ill being patient of chronic diabetes and heart disease with UTI. No notice was ever received by defendant No. 4. No authorisation was given in favour of the Advocate to appear on her behalf. Earlier written statement was never signed by defendant No. 4. By way of proposed amendment, in the earlier written statement, legal representative of defendant No. 4 i.e. petitioner, seeks to incorporate factum of Will dated 16.11.2000 vide which property in question was bequeathed by Shavinder Singh @ Surinder Singh in favour of Darshan Singh husband of Lakhbir Kaur daughter of Shavinder Singh alias Surinder Singh. All the heirs of Shavinder Singh are parties to the litigation. The factum of the Will was not disclosed by any of the parties. The beneficiary of the Will i.e. Darshan Singh was also sought to be impleaded as party-defendant in the suit by way of filing an application under Order 1 Rule 10 of CPC by the petitioner. The said application was rejected by the Civil Judge (JD), Patiala on 18.02.2017. Even the petitioner also sought to get separate issue framed in respect of Will of Shavinder Singh in terms of Order 14 Rule 5 of CPC. The said prayer was also declined by Civil Judge (JD), Patiala vide order dated 03.01.2017.

By way of proposed amendment/amended written statement, the petitioner without claiming anything on the basis of Will seeks to espouse the cause in favour of Darshan Singh who happens to be the husband of *Massi* of the petitioner.

Lakhbir Kaur is also party as defendant No. 1 in the suit. She has not based any claim on the basis of Will executed by Shavinder Singh in favour of her husband.

With the assistance of learned counsel for the parties, it can be noticed that the present suit was filed on 23.03.2011 and the predecessor of defendant No. 4 filed his written statement on 05.11.2011, thereafter issues were framed on 23.02.2012 itself and the case was adjourned for evidence of the plaintiff. Plaintiff appeared as witness on 21.11.2012. Despite filing affidavit Ex. PW1/A and documents Ex. P1 to P3, the plaintiff was not cross examined. After lapse of about four years and six months, the application in question came to be filed. It is true that the amendment in the written statement is to be liberally construed and all bonafide amendments are to be allowed.

In the instant case, the petitioners has not claimed anything for herself, rather she claims implementation of Will in favour of Darshan Singh, who happens to be husband of defendant No. 1. There is no matrimonial dispute between defendant No. 1 and her husband-Darshan Singh. All the daughters of Shavinder Singh are parties to the litigation. None of them has come forward to claim validity or otherwise of the Will by way of raising specific stand. Even Darshan Singh has not come forward to seek declaration of the Will in question. The

petitioner remained unsuccessful in getting Darshan Singh to be impleaded as party- defendant to the suit, nor any specific issue could be framed at the instance of the petitioner. The litigation appears to be proxy in nature. At this stage without meaning anything on the merits of the case, I deem it appropriate not to interfere in the impugned order passed by the Civil Judge (JD), Patiala.

This revision petition is, accordingly, dismissed.

8th May, 2018

shabha

(RAJ MOHAN SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>