

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

234

CR-1244-2016

Date of Decision : December 10, 2019

BALBIR KAUR

.....Petitioner

VERSUS

CHUHAR SINGH AND ORS

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Rajiv Joshi, Advocate
for the petitioner.

Mr. P.K.Sareen, Advocate
for respondent No.1.

NIRMALJIT KAUR, J. (Oral)

The present revision is filed against the order dated 6.2.2016 passed by Civil Judge (Sr. Divn), Phillaur whereby the application of the petitioner under Order 6 Rule 17 CPC was dismissed.

While praying for setting aside the said order as well as with a liberty to amend the plaint, learned counsel for the petitioner submitted that the amendment goes to the root of the case and is necessary for proper adjudication. Further, the said application was dismissed primarily on the ground that it was filed at a belated stage and that the same would result in de-novo trial, whereas, there is no discussion on the question as to whether the proposed amendment is necessary and the refusal to allow the amendment would result in injustice. Reliance is placed on the judgment rendered by the Ho'ble Apex Court in the case of **Prithvi Pal Singh** Vs. **Amrik Singh and others**, 2014(1) Civil Court Cases 797

(S.C.) to contend that the said amendment can be allowed even at a belated stage when the amendment is sought to be added is only a fresh ground and not a new relief and also in case the same is necessary for the decision of the dispute in question.

There is no dispute with the proposition of law laid down by the Hon'ble Apex Court in the judgment referred by learned counsel for the petitioner. The said judgment needs to be examined in the facts of the present case. In the case in hand, the suit is for declaration qua 1/4th share of the land culled out in the head note of the suit and the Will in favour of the respondent has been challenged on the ground that it was forged and fabricated. Admittedly, the petitioner herein is the daughter of the author of the Will. Therefore, she knew from the very beginning as to whether the said land was ancestral or not. The evidence for declaring the Will as forged and fabricated would be entirely different from alleging that the said land cannot be made a subject matter of the Will being ancestral land and that the author of the Will had no right to give the property away by way of a Will. Hence, amendment as prayed for will require fresh evidence and would change the entire nature of the suit even if the relief remains the same. The issue too would have to be framed afresh, whereas, the rebuttal evidence is going on. It is, therefore, apparent that the said amendment is being sought only to fill up the lacuna and probably on account of insufficient evidence available to prove that the Will was forged and fabricated which cannot be permitted. From above, it is apparent that there was total lack of due diligence and rather, the

amendment does not appear to be bonafide.

Accordingly, no ground to interfere in the impugned order is made out.

Dismissed.

However, nothing stated herein above shall have no bearing on the merits of the case.

December 10, 2019
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(NIRMALJIT KAUR)
JUDGE

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