

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 201

CR-2339-2016

Date of decision : 27.11.2019

Bhupinder Kaur Kohli and another

..... Petitioners

VERSUS

Paramjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Parvinder Singh, Advocate, for the petitioners.

Mr. H. S. Saini, Advocate, for respondents No. 1 to 3 and 5.

Mr. Harshit Sethi, Advocate, for respondent No. 4.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 11.02.2016, passed by the Civil Judge (Junior Division), SAS Nagar, Mohali (for short, the Trial Court) through which an application filed by the petitioners under Order 6 Rule 17 CPC seeking therein amendment in their plaint was dismissed.

Shorn of unnecessary details, the relevant facts which need to be noticed for adjudicating upon the present petition are that the petitioners filed a suit seeking therein a declaration to the effect that they and defendant No. 3 be declared co-owners in joint possession of the movable and immovable properties (for short, the suit properties) owned by their mother late Smt. Mohinderbir Kaur. Will allegedly executed by Mohinderbir Kaur in favour of respondents No. 1 and 4 was also challenged. Mandatory injunction to direct the defendants in the suit to disclose the lockers and the bank accounts etc. of Mohinderbir Kaur was also prayed for. In the alternative, the petitioners prayed for possession of the suit properties. The respondents were further sought to be restrained from alienating the suit properties or encashing Mohinderbir Kaur's FDRs etc.

On being put to notice, the defendants appeared before the Trial Court and refuted the petitioners' claims. However, before the Trial Court framed issues, an application was filed by the petitioners seeking therein to amend their suit to

challenge therein a Will executed by Mohinderbir Kaur in favour of respondent No. 7

as also to implead respondent No. 7 as a defendant in the suit. Such application was rejected by the Trial Court through the order which was challenged by the petitioners before this Court through CR-1698-2013 "*Bhupinder Kaur Kohli and another vs Paramjit Singh and others*" which petition was allowed on 22.08.2013 and resultantly, the prayer made by the petitioners therein was accepted. Thereafter the Trial Court framed issues and when the petitioners had examined eight witnesses, majority of whom were bank officials, another application was filed by the petitioners seeking again to amend their plaint to include therein a prayer that in Mohinderbir Kaur's estate respondent No. 6 be held entitled to 1/4th share as also that in the head note of their plaint they be permitted to give description of all the immovable/movable properties of Mohinderbir Kaur to which the petitioners were staking their claim. They further sought to delete unnecessary repeated mentions of certain facts which were detailed in their amendment application. The petitioners' aforesaid application was dismissed by the Trial Court on the ground of delay and lack of due diligence on their part. Such order of the Trial Court is under challenge through the present petition.

Learned counsel for the petitioners submits that he has express instructions from his clients to state that though the amendment application had been filed by them seeking therein three reliefs, in the present petition he would only press the amendment sought by them to detail in the head note of the plaint the immovable/movable properties of Mohinderbir Kaur as also the amendments sought to declare respondent No. 6 entitled to 1/4th share in Mohinderbir Kaur's estate. He further undertakes that in case this Court permits the amendments sought by the petitioners, the petitioners would not lead any further evidence.

Learned counsel for respondents No. 1 to 3 and 5 and respondent No. 4 submit that subject to the petitioners not leading any further evidence, their respective clients have no objection if the petitioners are permitted to amend their plaint to

include therein the detailed description of Mohinderbir Kaur's estate. However, they objected to the amendment sought by the petitioners to include therein a prayer to declare respondent No. 6 to be entitled to 1/4th share of Mohinderbir Kaur's estate as according to them respondent No. 6 was competent enough to raise such a claim as a counter-claim or through an independent suit. Learned counsel further submitted that in case this Court permits the petitioners to amend their plaint only with regard to detailing therein Mohinderbir Kaur's estate, like the petitioners, respondents No. 1 to 3 and 5 and respondent No. 4 would also lead no further evidence.

In view of the above consensus between the parties and because allowing of the amendment to include in the petitioners' suit the description of Mohinderbir Kaur's entire estate would also assist the Trial Court to deliver a comprehensive judgment on Mohinderbir Kaur's estate and thus prevent multiplicity of litigation, the same should have been allowed by the Trial Court especially when after such amendment both parties have undertaken not to lead any further evidence.

The second amendment sought by the petitioners with regard to a declaration that respondent No. 6 be held entitled to 1/4th share of Mohinderbir Kaur's estate, cannot be accepted as it was for respondent No. 6 to independently agitate for his rights.

In view of the above, the impugned order is modified to the extent that the petitioners are permitted to amend their plaint to include therein the detailed description of Mohinderbir Kaur's immovable and movable properties as given by them in their amendment application.

The petitioners' suit has been pending for the last over eight years. Since only the amendment to the extent above has been permitted and as undertaken by learned counsel for the parties that no further evidence would be led by the parties, the Trial Court is directed to make every endeavour to finally adjudicate upon the petitioners' suit on or before 31.03.2020.

The petition is disposed of in the above terms.

27.11.2019
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes	/	No
Whether reportable	:	Yes	/	No