

CR-2866-2018 (O&M)

203

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

CR-2866-2018 (O&M)

Date of decision : 09.04.2019

Baljit Singh

... Petitioner

Versus

Jaspal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Sourabh Arora, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-plaintiff for amendment of the plaint, at the stage of first date, after framing of the issues, has been dismissed.

Mr. Vijay Lath, learned counsel appearing on behalf of the petitioner submitted that the plaintiff at the time of filing the suit, was under depression owing to the fact that few of his friends had owed the money, but did not return back. The suit, aforementioned, was filed for declaration that he was owner in joint possession of ½ share out of 1/8th share in land, by challenging the sale deed dated 16.09.2014 executed by Gurbachan Singh, deceased, father of the plaintiff and defendant No.2, in favour of defendant No.1 as well as mutation bearing No.1996. The plaintiff, vide amendment,

CR-2866-2018 (O&M)

wanted to describe the ownership of the suit property by Maha Singh, great grandfather of the plaintiff and defendant No.2, in other words, transmission of the property, in the name of inheritors of Maha Singh, and another amendment was with regard to the Will. The said application was opposed by raising the objection that the amendment would change the nature of the suit property and denied the friends' circle of the plaintiff. The objection qua maintainability of the application for amendment, as the issues were already framed, was also taken. The amendment is clarificatory and would help the Court for adjudication of the *lis*.

Per contra, Mr. Sourabh Arora, learned counsel appearing on behalf of respondent No.1, supported the impugned order and submitted that once the issues had already been framed, the amendment sought cannot be incorporated, despite the fact that the plaintiff wanted to connect the suit property with great grandfather and subsequent transmission of the same in the line of inheritance as well as devolution of the suit property through registered Will dated 14.12.2000. It is totally a new case and cannot be permitted to be incorporated in the pending suit.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Lath, for, the defendants did not emphatically deny the contents of the application for amendment, where the plaintiff wanted to incorporate the nature of the suit property to be ancestral i.e. by explaining the transmission/devolution of the interest from great grandfather as subject matter of challenge in the suit is to the sale deed, referred to above, on the basis of the Will. It will help the Court for adjudication of the *lis* and it is linked with the main case and cannot be said to be a setting up a new case.

CR-2866-2018 (O&M)

It is a matter of fact that the application was moved only after framing of the issues i.e. on 02.12.2017. The Court below should not have adopted hyper-technical approach as the whole purpose in the suit is to contest on merits and at the best, could impose some costs.

Keeping in view the aforesaid facts, the impugned order, under challenge, is hereby set aside and the application for amendment is allowed, subject to the costs of ₹7,000/-, which shall be condition precedent.

With the aforesaid observations, the present revision petition stands disposed of.

09.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**