

CR-3283-2018 (O&M)

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

CR-3283-2018 (O&M)

Date of decision : 20.05.2019

Swaran Singh and others

... Petitioners

Versus

Piara Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Naresh Prabhakar, Advocate
for respondent Nos.1, 2, 5(i) to (iii), (v) and (vi).

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioners-defendants for seeking amendment of the written statement, by incorporating the pleading of the Will of deceased-Babu @ Bawa Singh, bequeathing the property in favour of grandsons Ajit Singh and Gurdeep Singh, has been dismissed.

Mr. Jagjit Singh, learned counsel appearing on behalf of the petitioners-defendants submitted that the plaintiffs filed the suit for declaration claiming the succession of Babu @ Bawa Singh, on the basis of the natural succession. The suit was contested on merits, resulting into, decretal of the suit. However, during the pendency of the appeal filed by the petitioners-defendants, found the Will of 27.03.1997 (Ex.P4), therefore, an occasion arose to seek the amendment, which is essential and necessary for the adjudication of the appeal.

Mr. Naresh Prabhakar, learned counsel appearing on behalf of

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the respondent Nos.1, 2, 5(i) to (iii), (v) and (vi), supported the impugned order, under challenge and submitted that the amendment tantamounts to fill up the lacuna as it would amount to *de novo* trial, for, if at all, the defendants were so interested, they could also simultaneously move the application for additional evidence. Neither any counter-claim nor any separate suit was filed, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jagjit Singh, for, in the absence of any pleadings or evidence, simpliciter application under Order 6 Rule 17 of the Code of Civil Procedure, without additional evidence, was not maintainable. Even otherwise, it was a defence of the petitioners-defendants. It is too late in a day to put the clock back by relegating the party to the trial Court. In my view, the application has rightly been dismissed by the Court below.

Keeping in view the aforementioned facts and circumstances, the impugned order, under challenge, cannot be said to be suffering from illegality and infirmity. No ground is made out for interference. The present revision petition is dismissed.

20.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**