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

**Civil Revision No.4192 of 2017 (O&M)
Date of Decision: 30.09.2019**

KANCHAN LATAPetitioner
Vs
ASHOK KUMAR AND ORSRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Arjun Lakhanpal, Advocate
for the petitioner.

Mr. Sunny Saggar, Advocate
for respondent Nos.1, 2, 3(d), 4 & 5.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 25.04.2017 passed by the Civil Judge (Junior Division) Payal, District Ludhiana, vide which the application under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

[2]. Brief facts are that in a suit for declaration of joint ownership and possession, the plaintiff has challenged the Will dated 25.09.1991 and transfer deed dated 14.07.2011 on the basis of subsequent Mutation No.8597 in respect of estate of Bal Krishan.

[3]. In the original plea taken in the plaint, ancestral nature of the property has been pleaded by claiming that the plaintiff is

having birth right in the property along with defendants No.1 to 4. After concluding her evidence, the plaintiff sought to incorporate by way of elaboration of her plea that in addition to birth right of the plaintiff, it be also incorporated that being a coparcener Bal Krishan was not absolute owner of the property, therefore, he was not competent to execute the Will dated 25.09.1991 in favour of defendants No.1 to 4.

[4]. Learned counsel for the petitioner submitted that since the evidence of the plaintiff has already been concluded, therefore, petitioner will not lead any evidence on the basis of proposed amendment.

[5]. Learned counsel for the respondents states that the plaintiff being daughter of Bal Krishan would not get any share in the ancestral coparcenary property, particularly when Bal Krishan had already died on 03.10.1991. In view of Amendment Act, 2005, the plaintiff has no right to succeed ancestral coparcenary property, particularly when Bal Krishan had already died before the commencement of the Act and the said Act has already been held to be prospective in nature.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. It is not in dispute that the plaintiff has already concluded her evidence. Evidence of the defendants is in

progress. The plea which is sought to be incorporated, appears to be an elaboration of fact based on original plea already taken in the plaint. All these things would be decided by the trial Court in due course. The proposed amendment in my considered view is just an elaboration of plea already taken in the plaint. The petitioner will not lead any further evidence on the basis of proposed amendment.

[8]. In view of facts and circumstances of the case, I find that the amendment in question is a *bona fide* amendment. Both the parties would lead their evidence in accordance with law and the trial Court shall thereafter proceed to decide the suit on merits.

[9]. At this stage, no consideration on merits can be made by this Court. Consequently, the Impugned order dated 25.04.2017 passed by the Civil Judge (Junior Division) Payal, District Ludhiana is set aside. This revision petition is allowed, however subject to payment of costs of Rs.10,000/- to be paid to the respondents. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

September 30, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No