

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

Civil Revision No.550 of 2013 (O&M)
Date of Decision: March 05, 2019

Nachhattar Kaur & others

...Petitioners

Versus

Baljit Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

Mr. Vikas Singh, Advocate,
for the respondents.

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order dated 25.10.2012, whereby application of the respondent-plaintiffs for amendment of the plaint subject to imposition of costs of ₹ 20,000/-, has been allowed.

This case has a little chequered history. Respondent-plaintiffs instituted the suit claiming declaration that they are owners in joint possession to the extent of 1/4th share of Smt.Charan Kaur daughter of Basta Singh (since deceased) by challenging the transfer deed dated 10.12.2008 and Will dated 22.10.2002 with consequential relief of permanent injunction qua alienation.

The aforementioned suit was contested by the petitioner-

defendants. However, during the pendency of the suit, on the basis of the statements of the parties submitted on 17.10.2016, suit was withdrawn. However, before its withdrawal, respondent-plaintiffs submitted an application dated 08.10.2012 (Annexure P-5) for amendment of the plaint by laying challenge to the Will and as well as opposing the declaration by alleging that the character of the suit property at the hands of Basta Singh was coparcenary and ancestral in nature. The aforementioned application was allowed, as noticed above, subject to payment of ₹ 20,000/- as costs and the present revision was filed in 2013. The revision of 2013 was also rendered to be infructuous in view of the withdrawal of the suit and later on, on the submission of the application, suit was revived by the plaintiffs and, therefore, the present revision has also been revived.

Mr. Vijay Lath, learned counsel for the petitioner-defendants submitted that both the parties to the lis have already led evidence. The suit was revived at the stage of rebuttal and arguments. The trial Court, though had imposed costs of ₹ 20,000/- but remained oblivious of the fact that it will tantamount to *de novo* trial and under the garb of filling up the lacunae which the plaintiffs failed to lead in affirmative. A valuable right has accrued to the defendants which cannot be taken away. It is not a case of amendment of the plaint as there are different parameters/stick yards for amendment of the pleadings, as noticed above. It is a sheer attempt to delay the trial.

Per contra, Mr. Vikas Singh, learned counsel for the respondent-plaintiffs submitted that before the present revision could be revived after revival of the suit, respondent-plaintiffs led evidence by examining the witnesses. Qua the amendment already allowed by the trial

Court, the parties have also cross-examined the witnesses. In fact, the tenor and mode of the order is in tandem with the pleadings, for, there is already a challenge, by giving passing reference, of the transfer deed and Will, despite the fact that the onus was always on a propounder.

Regarding ancestral property, evidence has already been led and the Court can always adjudicate the issue on merits and, thus, prayed for upholding of the order under challenge.

I have heard the 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. Vijay Lath owing to the facts noticed above.

On plain and simple perusal of the plaint, plaintiffs have already laid challenge to the Will and the transfer deed and in such circumstances must have led evidence, therefore, the amendment qua laying challenge to the Will was wholly fallacious. The order of the trial Court cannot be permitted to sustain and hereby set-aside.

As regards the other part, since the plaintiffs have already led evidence, I am of the view that such amendment would not take away the right, as the defendants would have a right to file the written statement and if need be, lead evidence in rebuttal. Qua the ancestral in nature, shall be at liberty to lead evidence in accordance with law.

At this stage, Mr. Vikas Singh submits that during the pendency of the revision petition, the evidence of the plaintiffs has been closed. Owing to the aforementioned order, plaintiffs are required to submit fresh affidavit in terms of the amendment qua the nature and character of the property. Since I am upholding the order qua amendment in part, plaintiffs are permitted to file affidavit to the aforementioned limited extent.

With the aforementioned clarification and modified in the
impugned order, revision petition stands disposed of.

March 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

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