

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

Sr. No.108

CR-1614-2019

Date of decision: 08.03.2019

Navpreet Kaur

....Petitioner

versus

Swaran Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Ramneek Vasudeva, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 06.02.2019 passed by the Civil Judge (Senior Division), Roopnagar (for short – the Trial Court) dismissing the petitioner's application filed by her under Order 6 Rule 17 CPC through which she had sought amendment of her plaint.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that in the year 2013, the petitioner filed a suit seeking therein to be declared owner in possession of ¼ share of the property detailed and described in the head note of the plaint (for short – the suit property). Transfer deed dated 17.06.2010 executed by respondent No.1 in favour of respondent No.2, mutation dated 20.07.2010 in favour of respondent No.2, sale deed dated 22.01.2013 executed by

respondent No.2 in favour of respondent No.5 and mutation dated 23.01.2013 in favour of respondent No.6 was also challenged. Permanent injunction to restrain the respondents from further alienating, transferring, creating charge, selling, gifting, mortgaging or changing the nature of the suit property was also prayed for. On being put to notice, in October 2013, respondents No.1 to 4 and 6 appeared before the Trial Court and filed a joint written statement through which they refuted the petitioner's claim. It was inter-alia submitted by them that in view of Mohinder Kaur's Will dated 09.07.1998 in favour of respondent No.2 the petitioner had no right over the suit property. Thereafter, the petitioner amended her plaint. Through such amendment, the khasra numbers of the property detailed and described by her in her plaint were changed. Respondents No.1 to 4 and 6 filed an amended written statement through which not only did they seek to defeat the petitioner's right through the Will of Mohinder Kaur dated 09.07.1998 but also set up in their defence two Civil Court decrees dated 01.12.1971 & 12.12.1997. Thereafter, the Trial Court framed issues on which the petitioner led her entire evidence. While the respondents were in the midst of leading their evidence, the petitioner filed an application seeking therein to again amend her plaint to include therein a challenge to the Will dated 09.07.1998 of Mohinder Kaur as also Civil Court decrees dated 01.12.1971 and 12.12.1997. Such application was dismissed by the Trial Court occasioning the filing of the present petition.

Learned counsel for the petitioner submits that the amendments sought by the petitioner was merely to include in her plaint a challenge to Mohinder Kaur's Will dated 09.07.1998 as also to the Civil Court decrees dated 01.12.1971 and 12.12.1997. As the sought amendments would not

change the nature of the suit and since the properties to which the aforesaid Will as also the Civil Court decrees pertain are already included in the petitioner's suit, the amendments should have been allowed by the Trial Court. It is further submitted that for the delay, if any, on the part of the petitioner in seeking the amendment, the respondents can be compensated through reasonable costs.

Through the sought amendment, the petitioner seeks to challenge Mohinder Kaur's Will dated 09.07.1998 as also the Civil Court decrees dated 01.12.1971 and 12.12.1997. Way back in October 2013, respondents No.1 to 4 and 6 had filed a written statement through which they had sought to refute the petitioner's claim by setting up Mohinder Kaur's Will dated 09.07.1998. After respondents No.1 to 4 and 6 had filed their aforesaid written statement, the petitioner filed an application seeking amendment of her plaint which was allowed. Through such amendment, the petitioner did not seek to challenge Mohinder Kaur's Will but only changed a few khasra numbers of the suit property. After the petitioner was permitted to amend her plaint, in May 2015, respondents No.1 to 4 and 6 filed an amended written statement, through which in addition to the aforesaid Will of Mohinder Kaur, they set up in their defence two Civil Court decrees dated 01.12.1971 and 12.12.1997.

Respondents No.1 to 4 and 6 had set up Mohinder Kaur's Will in their defence in October 2013. The Civil Court decrees were pleaded by them in their written statement in May 2015. In spite of the same, the petitioner did not file any application seeking to amend her plaint to include therein the challenge to the aforesaid Will and decrees and continued to lead her evidence and concluded the same. Thereafter, when the respondents

were in the midst of leading their evidence, in December 2018 i.e. after over five years she had been put to notice with regard to Mohinder Kaur's Will and over three and a half years after she became aware of the aforesaid two decrees, an application was filed by her seeking to amend her plaint to include therein a challenge to the aforesaid Will as also the Civil Court decrees. Such challenge by her is barred by limitation. There is also no worthwhile reason given by the petitioner to explain the delay in seeking such amendment. The reason given by the petitioner for the delay is that she filed the amendment application after DW-1 Inderpal Singh had been examined-in-chief on 17.10.2018. Such explanation merits outright rejection in view of the above facts which clearly put the petitioner to notice of the Will dated 09.07.1998 of Mohinder Kaur as also Civil Court decrees dated 01.12.1971 and 12.12.1997 over five years and three and a half years ago respectively.

In view of the above, no merit is found in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

March 08, 2019

Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No