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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2019 16:46
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CR-3301-2019 (O/M)
Date of decision : 20.5.2019

Amarjit Kaur and another

..... Petitioner (s)

Versus

Captain Sukhjit Singh Mann and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. B.S. Bedi, Advocate,
for petitioners.

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KULDIP SINGH, J. (ORAL)

Impugned in present revision is order dated 29.4.2019 (Annexure-P-1), passed by learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, vide which application filed by present petitioners, who are defendants No. 3 to 5 in civil suit, titled as Sukhjit Kaur Versus Captain Sukhjit Singh Mann and others, for amendment of written statement as well as counter claim, was dismissed.

Heard.

In this case, property of one Inder Singh Mann is in dispute. Plaintiff-respondent No. 4 and defendant-respondent No. 2 are daughters of said Inder Singh Mann, whereas defendant-respondent No. 1 is son of said Inder Singh Mann and defendants No. 3 to 5 are legal heirs of another son Charanjit Singh Mann. Plaintiff-respondent No. 4 claims ownership to the extent of 1/4th of property left by said Inder Singh Mann. Defendant-respondent No. 1, in written statement, claimed Will dated 30.11.1980 and has also set up a consent decree dated 5.8.1985.

In said civil suit, defendants No. 3 to 5 filed written statement as well as counter claim, claiming ownership and possession of suit property. Now, case is stated to be at rebuttal and arguments stage. An application was filed that suit property is ancestral property as same was allotted to said Inder Singh Mann in lieu of property left by him in West Punjab (now in Pakistan). Said property was inherited by said Inder Singh Mann from his father and is ancestral qua defendants No. 3 to 5. Therefore, their share will come to $\frac{3}{8}^{\text{th}}$ and not $\frac{1}{4}^{\text{th}}$. This fact came to notice of defendants No. 3 to 5 when then visited office of Land Claims Officer of Relief and Rehabilitation, East Punjab, Revenue Records from Pakistan.

Trial Court has taken view that trial in this case has already concluded. There is nothing to suggest that said fact was not within knowledge of defendants No. 3 to 5 and that inspite of due diligence, they could have raised matter before commencement of trial.

The learned counsel for petitioners has relied upon authority of Hon'ble Supreme Court of India in Gurbakhsh Singh and others Versus Buta Singh and another, Civil Appeal No. 4568 of 2018 (arising out of SLP (Civil) Nos. 7710 of 2018).

Perusal of said authority shows that in said case, application for amendment of plaint was filed when issues were already framed and thereafter two official witnesses were examined, but present is a case where full fledged trial has virtually been completed and case is fixed for arguments. Now, defendants-petitioners want to set up entirely a new case by stating that it was ancestral property. They want to reopen case. The record with revenue authorities was even available when written statement was filed and counter claim was submitted. It was also available when defendants-petitioners were leading evidence. Therefore, trial Court has

rightly concluded that said facts could have been detected by defendants
petitioners with due diligence and could be raised before commencement of
trial. Infact, allowing amendment would mean that a de novo trial will
start. There is no illegality or infirmity in impugned order. Thus, revision
is dismissed.

(KULDIP SINGH)
JUDGE

20.5.2019
sjks

Whether speaking order : Yes / No
Whether reportable : Yes / No