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

**Civil Revision No.6522 of 2019 (O&M)
Date of Decision: 17.10.2019**

Ramesh Kumar

.....Petitioner

Vs

Ramdari @ Ram Dhari and others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Nonish Kumar, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has laid challenge to the order dated 12.09.2019 passed by the Civil Judge (Junior Division) Gohana vide which the application for amendment of the plaint under Order 6 Rule 17 read with Section 151 CPC was dismissed.

[2]. Perusal of the record would show that earlier CR No.1699 of 2018 was filed by the petitioner against the order dated 12.12.2017 passed by the trial Court vide which evidence of the petitioner was closed by order of the Court. The Co-ordinate Bench vide order dated 03.04.2018 passed in the aforesaid revision petition, directed the trial Court to afford only one opportunity to the plaintiff/petitioner to conclude his entire evidence at his own responsibility, with the assistance of the

trial Court for summoning the official witnesses through bailable warrants or otherwise, subject to payment of costs of Rs.10,000/- to be deposited with the Member Secretary, District Legal Services Authority, Sonapat. It was also observed that the said order was passed without issuing notice of motion in order to prevent unnecessary delay in disposal of the case, however liberty was given to the respondents to move appropriate application for recalling of the order, if they consider themselves to be aggrieved by the said order. No application for recalling of the said order was filed by the respondents.

[3]. Thereafter, the present application under Order 6 Rule 17 CPC was filed by the plaintiff/petitioner for amendment of the plaint on the ground that the factum of transfer deed No.4155 dated 10.01.2017 and consequent mutation No.3760 were not known to the plaintiff at the time of filing of the plaint. The challenge to the aforesaid transfer deed is sought to be incorporated in the suit.

[4]. It can be appreciated from the record that the plaintiff has filed the suit for declaration and permanent injunction in respect of the suit property. Defendants have contested the suit by filing written statement, wherein Will dated 27.12.2006 executed by Late Bhundal was relied in respect of movable and immovable property in favour of defendant No.1 for which

mutation No.3597 was sanctioned in favour of defendant No.1.

In the evidence led by the defendants, attesting witnesses namely Rajpal and Dharam Singh have been examined. The aforesaid witnesses have admitted in their cross-examination that the beneficiary of defendant No.1 and his sons (other defendants) were present at the time of execution of Will in question. As per testimony of DW-2, the witness was called by Dinesh i.e. son of defendant No.1 and not by the testator. Except the beneficiary, there were six other legal heirs of the testator namely Bhundal, but the beneficiary and his son namely Dinesh were also present.

[5]. By referring to the aforesaid incriminating facts, the trial Court after noticing the age of the Bhundal to be 95 years and his mental state of health, proceeded to dismiss the application by observing that the plaintiff had come to know about the Will dated 27.12.2006 on 22.12.2015, when the written statement was filed by the defendants. The plaintiff was supposed to lead evidence as per pleadings and the foundation made therein.

[6]. In the order dated 03.04.2018 passed by the Co-ordinate Bench in the earlier CR No.1699 of 2018, only one opportunity was granted to the plaintiff/petitioner to conclude his entire evidence. In the event of acceptance of the application for amendment of the plaint at this juncture, the plaintiff would in

any case seek further opportunity to lead evidence which will be against the spirit of order dated 03.04.2018 passed in the aforesaid revision petition.

[7]. The evidence of the plaintiff/petitioner has already been concluded and the defendants have also completed their evidence when the same was closed by order of the Court on 08.05.2019. The case has reached the stage of rebuttal evidence (if any) and arguments. At this stage of the suit, it would not be appropriate to dilate upon the issue in question as it would run against the spirit of order dated 03.04.2018 passed by the Co-ordinate Bench in CR No.1699 of 2018. Further a mutation No.3760 had already been sanctioned in the context of transfer deed No.4155 dated 10.01.2017. Sanctioning of mutation being a public document cannot be ignored to say that the plaintiff has recently come to know about the factum of transfer deed dated 10.01.2017.

[8]. For the reasons recorded hereinabove, I do not see any justification to interfere in the impugned order passed by the trial Court. This revision petition is found to be devoid of merits and is dismissed as such.

October 17, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No