

CR-7213 of 2019

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

CR No.7213 of 2019

DATE OF DECISION:27.11.2019

Gurbhawanjit Kaur

...Petitioner/plaintiff

Vs.

Paramjit Kaur and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Rishabh Gupta, Advocate
for the petitioner/plaintiff.

LALIT BATRA, J. (Oral)

CM No.24302-CII of 2019

This civil miscellaneous application under Section 151 CPC has been moved at the instance of applicant-petitioner for placing on record documents in the shape of Annexures P-6 and P-7.

Heard.

In view of the facts mentioned in the application, applicant-petitioner is permitted to place on record documents Annexures P-6 and P-7.

CM is disposed of accordingly.

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Present revision petition has been filed by petitioner/plaintiff

impugning the legality of order dated 30.09.2019 (Annexure P-5) rendered by trial Court, in terms of which, application for amendment of plaint moved under Order VI Rule 17 read with Section 151 CPC by petitioner/plaintiff, has been dismissed.

2. Briefly stated, Gurmeet Kaur (since deceased) had filed instant suit for declaration claiming herself to be the sole owner of amount lying deposited in the Saving Bank account No.2087101000327 and further amount lying deposited in the shape of FDR No.194826 being under the category of either or survivor with consequential relief of mandatory injunction directing defendants No.2 and 3 (Canara Bank) to make the payment of above said account and FDR to the plaintiff. However, during the pendency of suit, said Gurmeet Kaur expired on 02.02.2016 and then on the basis of registered Will dated 30.04.2013 executed by Gurmeet Kaur (since deceased), petitioner-Gurbhagwanjit Kaur being LR of said Gurmeet Kaur has been impleaded as plaintiff in the instant suit by the trial Court, vide order dated 15.07.2019 (Annexure P-7). Thereafter, application for amendment of plaint was moved by petitioner/plaintiff (Gurbhagwanjit Kaur) to incorporate above said fact of execution of Will dated 30.04.2013 by Gurmeet Kaur (since deceased) in her favour, but vide impugned order dated 30.09.2019, said application has been dismissed by the trial Court.

3. I have heard learned counsel for the petitioner/plaintiff and have carefully gone through the record of the case. It is pertinent to

mention here that respondents/defendants have already been proceeded *ex parte* before trial Court, as is evident from impugned order.

4. Before proceeding further, it would be appropriate to go through relevant provisions of Order VI Rule 17 CPC, which reads as under:-

“Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

5. A bare perusal of record of the case reveals that vide order dated 15.07.2019 (Annexure P-7), petitioner (Gurbhagwanjit Kaur) being grand-daughter of Gurmeet Kaur (since deceased) was impleaded as plaintiff especially in view of registered Will dated 30.04.2013 (Annexure P-6) executed by said Gurmeet Kaur in favour of petitioner (Gurbhagwanjit Kaur). Immediately thereafter instant application seeking amendment of plaint in the manner, as detailed above, was moved by the petitioner but the said application has been dismissed by the trial Court

mainly on the ground that incorporation of factum of Will, if any, executed by Gurmeet Kaur (since deceased) in favour of petitioner is not relevant and moreover in case proposed amendment is allowed, it would tantamount to holding a trial within trial. However, above said findings recorded by trial Court while rejecting above said application are not in consonance with the findings recorded by it when vide order dated 15.07.2019 (Annexure P-7), trial Court had impleaded petitioner (Gurbhagwanjit Kaur) as plaintiff being LR of Gurdeep Kaur (since deceased) especially on the basis of Will dated 30.04.2013 (Annexure P-6) executed by said Gurdeep Kaur in favour of petitioner. It would be worthwhile to mention here that by incorporating the assertion, as detailed above, in the plaint by the petitioner, no prejudice is likely to be caused to the opposite party. Opposite party will have full opportunity of meeting the cause of petitioner, as amended. Moreover, proposed amendment of plaint is necessary for just decision of civil suit more properly and effectively. Even otherwise ingredient of "due diligence" is in concurrence to the cause of petitioner as immediately after her impleadment as petitioner in the instant suit, this application for amendment of plaint, was moved by the petitioner. In this scenario, claim of petitioner seeking amendment in plaint, falls within four corners of provisions of Order VI Rule 17 CPC.

6. As a sequel to above discussion, instant civil revision is allowed. Impugned order dated 30.09.2019 (Annexure P-5) rendered by

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trial Court, is set aside. Resultantly, application for amendment of plaint, as detailed above, moved by petitioner/plaintiff, is allowed.

7. Disposed of.

(LALIT BATRA)
JUDGE

27.11.2019

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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No