

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

CR No.3820 of 2016 (O&M)

Date of decision: 19th February, 2020

Kabal Singh

... Petitioner

Versus

Sukhwinder Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Munish Gupta, Advocate for the petitioner.

Mr. C.L. Sharma, Advocate for respondent No.1.

Service of remaining respondents – dispensed with.

FATEH DEEP SINGH, J.

In a suit between the plaintiff (now respondent No.1) Sukhwinder Singh and then defendants Kabal Singh (now petitioner) and others, the plaintiff had sought declaration in respect of the land detailed in the head note of the plaint and during the course of proceedings, an application dated 27.11.2014 was filed by the applicant petitioner seeking amendment in the written statement to enable him to incorporate the plea that an unregistered Will dated 04.08.1973 was executed in favour of Kabal Singh defendant No.1 and his brothers namely Harbhajan Singh, Onkar Singh, Satnam Singh and Balbir Singh. After inviting reply from the other side, the Court vide impugned findings dated 05.05.2016 dismissed the application. The present revision petition is an outcome of the same.

On hearing Mr. Munish Gupta, Advocate for the petitioner; Mr. C.L. Sharma, Advocate for respondent No.1 and perusing the records of the case.

With the amendment to the provisions of Order VI Rule 17 CPC with effect from 01.07.2002, a proviso was added that no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that in spite of due diligence the party could not have raised the matter before commencement of the trial and further it is integral and essential part of this provision that the same should be for the purpose of determining the real question in controversy between the parties.

Reverting back to the instant case, it is the own stand of learned counsel for the petitioner that the suit, out of which the present petition has arisen, was filed in the year 2009 and the application seeking amendment of the written statement had come about in the year 2014. As is there in the pleadings before the lower Court and so is the stand in the submissions of learned counsel for the two sides in their arguments before this Court, on the basis of this alleged Will, mutation was sanctioned much prior to 1974 and therefore at the time of inception of the present suit in 2009, the petitioner was fully aware of this Will and its due implementation. However at the time of filing written statement, no such stand was taken by the then defendant (now petitioner) and at a belated stage after almost five years, the same is sought to be incorporated when admittedly the suit is at the stage of trial.

Though with much fanfare learned counsel for the petitioner has sought to place reliance on '**Baldev Singh & others vs. Manohar Singh & another**' 2006(3) RCR (Civil) 844 to hammer home the point that the mere delay in such regards is not fatal for the prayer for amendment of the pleadings however, it is not the stand as is sought to be contemplated on behalf of the petitioner by his counsel. As has been submitted on behalf of the respondent, it is merely a subsequent belated stand taken to fill in the lacuna in the case of the present petitioner (then defendant) when they were fully aware of the presence of the Will in their favour as well as its due sanctioning resulting in the mutation in their favour way back in the year 1974. Thus, the Court below has rightly concluded that there is total lack of due diligence on the part of the party besides the fact if such a pleading is allowed at this stage, it would defeat not only the very purpose of expeditious trial but would also likely to change the very nature of the relief being sought and the nature of the suit. Thus, this Court does not feel any illegality or perversity in the findings of the Court below. As such, there being no merit in the present petition, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 19, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No