

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

Civil Revision No.469 of 2020 (O&M)
Date of Decision : 11.02.2020

Fauja Singh

... Petitioner

versus

Amarjit Kaur @ Manjeet Kaur & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashok Singla, Advocate
for the petitioner.

RAJBIR SEHRAWAT, JUDGE (ORAL)

This civil revision petition has been filed by challenging the order dated 06.01.2020 passed by Civil Judge, Fazilka, whereby the application filed by the defendants/petitioner to amend the written statement has been disallowed.

The parties herein are referred to as the defendants/plaintiffs as they were referred in the original suit.

Counsel for the petitioner has submitted that the Court below has gone wrong in law in not appreciating the issue involved in the amendment in its right earnest. It is submitted that the suit pertains to the validity of the Will dated 18.03.1997, executed by Surjan Singh, the father of the plaintiff and defendant No.1. Petitioner/defendant No.1 is claiming the validity of the Will. Already, an issue has been framed qua the validity of the Will, with the burden of proof of the same, being on the defendant No.1/present petitioner. The petitioner has already taken a plea qua validity of Will in the original written statement. By way of an amendment, the petitioner intends to explain only one of the facts mentioned in the

Will, qua the reason for exclusion of the plaintiff from the Will. Although, the Will says that the plaintiff had expired at the time of execution of the Will, however, although, the plaintiff had not expired, yet the father of the parties was considering her to be dead because of her conduct in running away from the family against the wishes of the members of family. This fact, the petitioner wants to include in the written statement that the plaintiff had fled away from the family annoying her father, which led to the recital in the Will mentioning her as dead. This fact is no way contrary to the stand already taken by the petitioner. Still further, it is submitted that the evidence of the defendant/petitioner had just started. The petitioner would lead the evidence qua the validity of the Will, which the plaintiff/respondent shall be entitled to rebut by leading whatever evidence she desires. Counsel further submits that whatever evidence the plaintiff/respondent would lead in rebuttal of the evidence of the defendant/petitioner, defendant shall not even claim any further right to rebut the same. Therefore, at least, with this condition, the petitioner deserves to be granted opportunity to amend the written statement; so as to include the correct factual gamut in the written statement.

Having heard the learned counsel for the petitioner and having perused the case file, this Court finds substance in the argument raised by the counsel for the petitioner/defendant, particularly, in view of the above said undertaking that the petitioner shall not claim any right to rebut the evidence which the respondent/plaintiff may lead in rebuttal of the evidence of the petitioner/defendant. Otherwise also; this Court is of the view that since the will is already set up to be valid by the petitioner/defendant, it is for the petitioner to prove the validity of the Will. Even the onus of proof has been fixed by the trial Court upon the petitioner/defendant only. Therefore, if the amendment in the written statement, sought by the defendant; is permitted, no prejudice would be caused to the plaintiff as such. The plaintiff/respondent shall have an absolute

right to rebut whatever evidence the petitioner/defendant leads to prove the Will in question. The onus of proof of this is upon the petitioner only.

In view of the above, the present petition is allowed. The interim order is set aside. The amendment sought by the petitioner/defendant in the written statement is permitted. However, it is clarified that after the petitioner/defendant leads the evidence qua the validity of the Will, the respondent/plaintiff shall have full right to lead in rebuttal any evidence; which she so desires, including qua the facts which have now been included in written statement by the petitioner/defendant.

Still further, to avoid any further delay, and as undertaken by the petitioner only, it is ordered that the petitioner shall not have any right to lead any evidence to rebut the evidence which the plaintiff/respondent may now like to lead.

The present petition is disposed of.

11th February, 2020

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No