

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

CR-1741-2021 (O&M)

Date of decision: 31.08.2021

Gurmail Singh

...Petitioner

Versus

Jaspal Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

In a civil suit filed by plaintiffs Gurmail Singh and Jasdeep Kaur, seeking declaration and permanent injunction against defendants Jaspal Kaur and others, plaintiffs had filed an application U/o 6 Rule 17 read with Section 151 CPC for amendment of the plaint, contending that defendant Jaspal Kaur is resisting the claim of plaintiffs for 1/7th share in property of Kuldeep Singh on the basis of inheritance, however, in a document executed by her on 01.09.2008, she admitted that property in dispute is to go to LRs of Kuldeep Singh on the basis of natural succession. Since the plaintiffs were not aware of the said documents at the time of filing of the present suit, therefore, they could not take this plea and now they want to amend the plaint taking a specific plea in that regard.

However, defendants No.1 to 3 and 10 to 15 in the written

reply filed by them, contested the application, stating that it has been filed just to prolong the proceedings. This application was, however, not opposed by defendant No.2, whereas, defendants No.5 to 7 had not filed reply to the application. The said application was declined by the trial Court, vide impugned order, the operative part of which is as under:-

“This application under Order 6 Rule 17 read with Section 151 CPC has been moved by the plaintiff for amendment of plaint to incorporate the factum of the execution of document dated 1/9/2008 by the defendant Jaspal Kaur wherein she has admitted the fact that the property in dispute is to go to all the legal heirs of Kuldeep Singh on the basis of natural succession. A perusal of the file reveals that an application for recalling the defendant Jaspal Kaur for cross-examination on the document dated 1/9/2008 was moved by the plaintiff on 1/4/2019. This application was allowed on 22/4/2019. The defendant Jaspal Kaur was completely cross-examined by the plaintiff after availing several opportunities only on 3/10/2019. Thereafter, five effective opportunities for leading rebuttal evidence have been availed by the plaintiff but the rebuttal evidence has still not been concluded. Thereafter, the present application was moved only on 29/1/2020. Clearly, the plaintiff was aware of the alleged document dated 1/9/2008 on 1/4/2019 if not prior to that. Then why did the plaintiff wait for around an year to move the present application. It appears that the motive is only to delay the trial. The trial has already been held up by the plaintiff for about an year. This court cannot allow this scenario to keep going endlessly. The file pertains to the year 2014. The plaintiff was in knowledge of the document previously. Proviso to Order 6 Rule 17 CPC applies with full force to the present situation. Accordingly, for the aforesaid reasons, the application merits dismissal.”

Plaintiff Gurmail Singh felt aggrieved by the said order and has filed the instant revision petition.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the revision petition.

Order 6 Rule 2 CPC specifically provides that every pleading shall

contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. The application moved by the plaintiffs for amendment does not relate to pleading of a material fact, rather talks of an admission by defendant Jaspal Kaur with regard to nature of the land on an application having been filed by the plaintiffs for recalling of Jaspal Kaur and confronting her with said document, the same has been allowed and plaintiffs have been permitted to confront her with the said document. The plaintiffs are required to prove their own case, though, they may seek some help from admission made by one of the defendants but then the Court shall have to see as to under what circumstances, the admission was made, whether it binds the other defendants or not and what weightage is to be given to the same. At the most, the plaintiffs may come up with a plea of estoppel, however, under the circumstances, the amendment of the plaint is not found to be necessary for just decision of the case. The application is highly belated also, having been moved at the fag end. Finding no merit in the revision petition, the same stands dismissed accordingly.

31.08.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No