

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

Sr. No.111

Civil Revision No.1867 of 2021

Date of Decision : September 10, 2021

Simrat Kaur Randhawa and another

...Petitioners

Versus

Surinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Animesh Sharma, Advocate, for the petitioners.

Mr. S.S. Momi, Advocate with
Mr. Partyush Sood, Advocate,
for respondents No.1 to 4.

SUDHIR MITTAL, J. (ORAL)

The petitioners have challenged order dated 27.07.2021 (Annexure P-1) whereby the trial Court has allowed the application filed by the defendants-respondents No.1 to 6 under Order 6 Rule 17 CPC for amendment of written statement. Vide the amendment, factum regarding re-marriage of Jagat Singh and birth of children from the second marriage is sought to be introduced.

Learned counsel for the petitioners has confined his argument to challenging the finding of the trial Court that the amendment sought to be introduced was not in the knowledge of the defendants before the commencement of the trial despite due diligence. Thus, the argument is that after the commencement of the trial the amendment sought could not have been allowed.

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Reliance has been placed upon *Vidyabai and others vs. Padmalatha and another, (2009) 2 SCC 409* and *Chander Kant Bansal vs. Rajinder Singh Anand, 2008(5) SCC 117*.

Application for amendment is on record as Annexure P-11. A perusal thereof shows that it has been stated therein that factum of re-marriage of Jagat Singh came to the knowledge of the defendants during the course of cross-examination of plaintiff-Simrat Kaur Randhawa. Thereafter, inquiries were made and it came to light that remarriage in fact took place and it resulted in the birth of four sons and one daughter. Part of the cross-examination of plaintiff-Simrat Kaur Randhawa is on record as Annexure P-10. Perusal thereof shows that a question was put whether she was aware that Jagat Singh had died after the area in question had fallen within the territory of India after partition, in response to which, she also stated that Jagat Singh had performed two marriages but she did not recall the name of the second wife.

In view of the aforementioned record, the finding of the trial Court that the defendants acquired knowledge of remarriage of Jagat Singh only after trial had started and the application was not hit by the proviso to Order 6 Rule 17 CPC, cannot be faulted. The view taken is a possible view. That being so, exercise of jurisdiction under Article 227 of the Constitution of India is not called for.

In *Vidyabai (supra)*, the Supreme Court has held that the Court concerned has no jurisdiction to permit an amendment unless the conditions precedent therefor are satisfied and the trial Court must come to a conclusion that in spite of due diligence the parties could not have raised the

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matter before the commencement of the trial. There is no quarrel with this proposition of law. The trial Court in fact has returned a finding to the said effect and thus, the said judgment does not further the case of the petitioners. In ***Chander Kant Bansal (supra)*** the expression 'due diligence' has been interpreted to mean diligence reasonably expected from and ordinarily exercise by a person who seeks to satisfy a legal requirement or to discharge an obligation. Again, there is no quarrel with this proposition. The defendants acquired knowledge of the factum of remarriage of Jagat Singh only during the course of cross-examination of plaintiff-Simrat Kaur Randhawa and thus, the argument that they did not exercise due diligence cannot be accepted.

It is then submitted that the cross-examination Annexure P-10 is dated 10.10.2019 whereas the application for amendment is dated 19.03.2021. Even after acquiring knowledge, nothing was done for a period of one and a half years. This fact in fact goes against the petitioners. After acquiring knowledge, they did due diligence. Jagat Singh died in the year 1938 and thus, his remarriage must have taken place many years before that. Time was required for collecting all the relevant information before filing the application for amendment.

In view of the above, the revision petition has no merit and is dismissed.

September 10, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No