

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

CR No.4327 of 2014 (O&M)

Date of decision: 24th May, 2022

Mahabir Singh & another

... Petitioners

Versus

Gurvinder Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.S. Guliani, Advocate for the petitioners.

Mr. Sandeep Jasuja, Advocate for the respondent.

FATEH DEEP SINGH, J. (ORAL)

Gurvinder Kaur then plaintiff (now respondent) filed against Mahabir Singh and another (present petitioners) a suit for declaration that she is co-sharer/co-owner of the land duly described and depicted in the head-note of the plaint on the basis of being a coparcener to the extent of 1/3rd share and has sought to challenge the transfer deed No.5313 dated 14.03.2008 alleged to have been executed by Mahabir Singh being illegal, null and void; and sought consequential relief of permanent injunction restraining the defendant from further alienating the suit land.

During the course of trial of the suit, an application under Order 6 Rule 17 CPC was moved by the defendant that due to inadvertence it has been mentioned in the written statement that the suit land is ancestral joint Hindu Family Property and thus acceding to the plea of the plaintiff when in fact the property has devolved upon

defendant No.1 through testamentary succession and therefore wanted to amend the written statement. The same stood declined vide impugned order dated 13.05.2014 by the Court of Additional Civil Judge (Sr. Divn.) Malout and that is how the present revision petition has come about.

Appreciating the submissions of the two sides, it is the plea of then applicant (present respondent) that the Will (Annexure P5) was executed on 04.06.1997 by deceased Gurmej Singh father of Mahabir Singh and thus, it was his personal property and the plea so taken in the written statement thus needs to be amended.

The parties are litigating over an estate of the family. The Will is claimed to be dated 04.06.1997 and the suit has been filed in the year 2014 and by that analogy the Will was very much in existence at the time when the written statement was filed and apparently because of inadvertence by the counsel the same could not be raised and is purely an error by the counsel who had drafted the written reply on behalf of the party. More so, for comprehensive adjudication of the dispute between the daughter-in-law and the father-in-law, it is necessitated that such a plea may be allowed to be raised so that it could be judiciously adjudicated at this juncture when the suit is underway and to the similar proposition is a Single Bench view of this Court in **‘Charan Kaur and another vs. Pritam Singh & others’ 2006(2) RCR (Civil) 64.**

The Apex Court in **‘Usha Balashaheb Swami & others vs. Kiran Appaso Swami & others’ 2007(2) RCR (Civil) 830**, while interpreting the law on this issue has held that amendment to written

statement needs to be taken in a liberal manner and that a party is within his right to amend even contradictory stand earlier taken in his pleadings and thus allowing such a plea would be conducive to the once and for all settlement of the dispute between the parties through adjudication by a Court of law. The impugned order certainly is bad in law and merely because the original Will has not been produced with the application is in no manner a reason to deny such a plea. The order as such being illegal is set aside and the present revision petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

May 24, 2022
rps

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