

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

CR-5605-2016 (O&M)

Date of Decision : 05.12.2022

Omkar Dass

....Petitioner

VERSUS

Harpreet Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B.S.Bhalla, Advocate for the petitioner.

Mr. Chanakya Batta, Advocate for
Mr. P.L.Singla, Advocate for the respondent.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 29.07.2016 (Annexure P-4) dismissing the application filed under Order 6 Rule 17 CPC for amendment of the plaint filed by the plaintiff-petitioner on the ground that by way of the proposed amendment the plaintiff-petitioner was trying to establish his title over the property in dispute as objection qua the same had been raised by the defendant-respondent in his written statement.

The brief facts relevant to the present lis are that the plaintiff-petitioner filed a suit for possession by way of redemption of shop measuring 12'x 28' as described in the heading of the plaint. Written statement was filed by the defendant-respondent who took an objection that the plaintiff-petitioner was not the only legal heir and there were other legal heirs also. Subsequently, prior to the framing of the issues, an application

for amendment was filed by the plaintiff-petitioner seeking to delete the last six lines of para 2(g) of the plaint and to add the following :

“Kamla Devi deceased of her free consent and sound disposing state of mind had executed a valid registered Will dated 18.05.2001 in favour of the plaintiff and Amarjit widow of Sunder Dass in lieu of the services rendered to her by the legatees. As per the above said Will Kamla Devi bequeathed the property bearing House No.4932 in favour of the legatees in equal shares to the extent of ½ share each. In the year 1994, the plaintiff and Amarjit widow of Sunder Dass effected the partition of the property bearing House No.4932 amicably vide which North side of the property came to the share of Amarjit and the South side of the same came to the share of the plaintiff. Amarjit widow of Sunder Dass has executed an affidavit dated 12.09.1994 in this regard. The disputed shop is the part of South side of the property bearing House No.4932. As such the plaintiff has become the mortgagor of the disputed shop by the operation of law.”

Learned counsel for the plaintiff-petitioner has contended that the proposed amendment is only legal in nature and only describes as to how the plaintiff-petitioner became owner of the suit property. It is further the contention that the said amendment would not change the nature of the

suit and that it has been filed at the very initial stage i.e. prior to the framing of the issues and the commencement of the trial.

Per contra, learned counsel for the defendant-respondent has contended that the details of the Will were well within the knowledge of the plaintiff-petitioner and a total fraud has been played on the Court by concealing facts and now moving the present application.

Heard.

In the present case, admittedly issues are yet to be framed and trial is yet to commence. The amendment to the plaint has been made at the very initial stage. The amendment sought is legal in nature in the sense that the same only seeks to explain as to how the plaintiff-petitioner became an owner of the property in dispute. The said amendment does not change the nature of the suit in any manner.

In view of the fact that the said amendment has been filed at the very initial stage and does not change the nature of the suit, the impugned order dated 29.07.2016 (Annexure P-4) passed by the Trial Court cannot be sustained. The present revision petition is, therefore, allowed. The application for amendment stands allowed subject to payment of Rs.30,000/- as costs to be paid to the defendant-respondent. Pending applications, if any, also stand disposed off.

December 05, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO