

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

CR-734-2019

Date of decision : 21.11.2022

Neena Singh

...Petitioner

Vs.

Veena Mann and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sandeep Jasuja, Advocate
for the petitioner.

Mr. Umesh Kumar Kanwar, Advocate
for the respondents.

MANOJ BAJAJ, J.

Petitioner (plaintiff) is aggrieved against the order dated 24.07.2018 (Annexure P-5) passed in Civil Suit No.89-2016 by Civil Judge (Senior Division) Fazilka, whereby her application for amendment of plaint was dismissed.

Learned counsel for the petitioner has argued that through the subject suit, plaintiff is seeking declaration against her sister (defendant No.1) to claim absolute ownership of the suit property measuring 42 kanals 6 marlas, by propounding a Will dated 20.05.2012 executed by her father late Mohar Singh, who died on 13.07.2012. He further submits that during the pendency of the suit, an application seeking amendment of the plaint was moved to add the relief of mesne profits, which has been dismissed by the Civil Judge (Senior Division), Fazilka by passing the impugned order dated 24.07.2018. According to the learned counsel, the amendment sought to be incorporated in the original plaint does not either changes the cause of action or the nature of the suit, but the trial Court has dismissed the said application without examining the facts

and circumstances of the case, therefore, the order warrants interference by this Court.

The prayer is opposed by learned counsel appearing on behalf of the defendant, who has argued that the suit was filed in 06.09.2015, wherein the written statements was filed on 20.11.2016, and thereafter, the issues were framed on 22.09.2017. He submits that the amendment is being sought after commencement of the trial, therefore, the trial Court has considered the stage of the suit while declining the application. According to him, trial Court has given justifiable reasons while dismissing his application, therefore, the revision petition be dismissed.

After hearing learned counsel for the parties and considering the above background, this Court finds that the dispute between the two real sisters relates to the inheritance of the property left behind by their father late Mohar Singh and both the parties have propounded Wills against each other. The Will propounded by defendant No.1 is dated 26.10.2009, whereas the claim made by the plaintiff is based upon Will dated 20.05.2012. The plaintiff has prayed for declaratory decree to claim absolute ownership of the property, therefore, the relief of mesne profits, if, allowed to be added in the plaint, it would neither alter the basic structure of the suit nor would cause any prejudice to the defendant.

No doubt, issues were framed on 22.09.2017, but the application for amendment of plaint was filed on 06.12.2017, when suit was at initial stage of recording evidence of plaintiff. Further, a perusal of the impugned order shows that the Civil Judge (Senior Division), Fazilka dismissed the application only on the ground that the issues stand framed and trial has commenced, but

the trial Court has not examined the nature of the amendment. Thus, this Court has no hesitation in holding that the impugned order suffers from illegality and impropriety and is not sustainable.

Consequently, the impugned order dated 24.07.2018 (Annexure P-5) is set aside and the application filed by the plaintiff under Order VI Rule 17 CPC is allowed.

Revision petition allowed.

(MANOJ BAJAJ)
JUDGE

21.11.2022

vanita

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