

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

CR No.3876 of 2019

Date of decision: 4th May, 2022

Gurindesh Sandhu & others

... Petitioners

Versus

Kirron Kher & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Arihant Jain, Advocate for the petitioners.

Ms. Hemani Sarin, Advocate for respondents No.1 and 2.

None for respondents No.3 and 4.

FATEH DEEP SINGH, J.

This invocation by way of revision petition under Article 227 of the Constitution of India has come about from petitioners numbering three, Gurindesh Sandhu and others whereby a challenge has been made to order dated 21.08.2018 (Annexure P5) of the Court of Civil Judge (Senior Division), Chandigarh by virtue of which their application under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the plaint stood dismissed.

Heard Mr. Arihant Jain, Advocate for the petitioners; Ms.Hemani Sarin, Advocate for respondents No.1 and 2, and perused the records of the case.

It is over an estate of Lt. Col. Thakar Singh who happens to be father of three children namely Amardeep Singh (son) since

deceased; Kirron Kher and Kanwaldeep Kaur alias Kanwal Thakar Singh (daughters) dispute had arisen. Admittedly, Lt. Col. Thakar Singh was owner of House No.65, Sector 8-A, Chandigarh and has since died on 08.11.2016 during the pendency of the civil suit in question which is for declaration to the effect that the transfer deed dated 21.09.2007 is illegal, null and void as well as consequential decree of permanent injunction restraining defendants from alienating 1/3rd portion of the house in question.

During the course of pendency of the civil suit, an application under Order VI Rule 17 CPC read with Section 151 CPC was moved by the plaintiff applicant seeking to amend the plaint that since defendants No.1 and 2 have placed on record and relied upon a registered Will dated 04.04.2012 purported to have been executed by Lt. Col. Thakar Singh then respondent No.3 and which they termed to be an outcome of fraud, coercion and undue influence, illegal and void document and wanted to incorporate the same entitling them to seek declaration challenging the Will in question as well and which stood declined.

The admitted stance of the two sides is that the suit is pending and at the fag end of plaintiffs' evidence. The initial suit is over a challenge to transfer decree dated 21.09.2007 over the same very property which is subject matter of the will purported to have been set up by defendant Nos.1 and 2 (present respondents). The claim of

plaintiffs initially was over the alleged transfer deed dated 21.09.2007 and during the pendency of the suit upon death of Lt. Col. Thakar Singh, respondents No.1 and 2 had set up a registered Will dated 04.04.2012. It is also not displaced that Amardep Singh son of Lt. Col. Thakar Singh and brother of Kirron Kher and Kanwaldeep Kaur alias Kanwal Thakar Singh had passed away on 28.12.2003 and two children were born out of his wedlock with plaintiff Gurindesh Sandhu on 11.02.1991 and 28.12.1994 who happen to be plaintiffs No.2 and 3. Thus, a question over the very inheritance of Lt. Col. Thakar Singh, whose wives have pre-deceased him, is the primary subject matter of dispute.

Rather than putting the parties to another litigation in the light of the arguments put forth by Ms. Hemani Sarin, Advocate that since it is a subsequent cause of action that has arisen, the plaintiffs needs to file a fresh separate civil suit to lay challenge to the Will so set up by the respondents and has tried to cite **‘Vijay Hathising Shah & another vs. Gitaben Parshottamdas Mukhi & others’ (2019) 5 SCC 360**; **‘Sham Kumar Kohli vs. Ashok Tandon & another’ CR 614 of 2017 D/d 07.03.2017 Punjab & Haryana High Court**; and **‘Rajesh Kumar Aggarwal and others vs. K.K. Modi and others’ (2006) 4 SCC 385** to bring about that there was no necessity of amendment of the plaint at this juncture as it would add to the lengthy litigation being set into motion and might even change the very nature of the suit; and to controvert it Mr. Arihant Jain, Advocate learned counsel for the

petitioners has sought to cite '**Rajesh Kumar Aggarwal and others vs. K.K. Modi and others**' (2006) 4 SCC 385 and '**Sampath Kumar vs. Ayyakannu & another**' 2002(4) RCR (Civil) 566 to bring about that it will curtail multiplicity of the litigation.

Appreciating the submissions, in the light of the admitted stance of the two sides that the dispute is over the house in question situated in Chandigarh which was earlier challenged on the basis of transfer deed dated 21.09.2007 and when the defendants (now respondents) have set up a Will dated 04.04.2012, the amendment is sought to be brought about. No doubt, it is permissible for the plaintiffs to have filed an independent and separate suit to challenge the Will but a question comes to the mind of this Court that since the litigation is between the same parties over the same very property subject matter of dispute and which relief can be permitted to be incorporated in the pending suit which is still at initial stage of plaintiffs' evidence would be a better proposition rather than reversing the clock and it might take immense time of the parties and the Courts to again adjudicate on such a dispute which is akin to the one before it. More so, it is very intent of the law that a dispute between the parties needs to be comprehensively adjudicated for all times to come rather than in fragments and such an amendment would certainly come handy for determining the real question in controversy between the parties and certainly cannot be termed to be an item of injustice or prejudice to any of them. The courts

need to be liberal in such interpretation of Order VI Rule 17 CPC which is to further the ends of justice and the Court needs to have a broader approach rather than constricted one.

Since it is consequent upon the death of Lt. Col. Thakar Singh on 08.11.2016 this case has come about during the pendency of the initial suit and therefore the Court needs to take notice of the subsequent events and the Will having come to light during its pendency, the Courts need to shorten the litigation and which will not only safeguard the interest of the parties but strengthen it.

In the light of what has been detailed and discussed by the Supreme Court in '**Rajesh Kumar Aggarwal and others vs. K.K. Modi and others**' (2006) 4 SCC 385 cited by both the sides, the Court below ought to have been liberal in construing the provisions of Order VI Rule 17 CPC and rather on the mere premise that it will tantamount to opening of Pandora's box and de-novo proceedings have certainly gone astray and fell into an error. The impugned order certainly is bad in law and needs to be set aside by way of acceptance of the present revision petition.

Ordered accordingly.

(FATEH DEEP SINGH)
JUDGE

May 4, 2022

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No