

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CR No.1357 of 2014 (O&M)
Reserved on : 13.01.2023
Date of Decision : 24.01.2023**

Dalbir Singh and Others

....Petitioners

VERSUS

Smt. Beero (deceased) through her LRs and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. G.S. Bhatia, Advocate for respondent nos.(i), (ii) (iii).

ALKA SARIN, J.

The present revision petition has been filed challenging the order dated 18.01.2014 passed by the lower Appellate Court vide which the application filed under Order VI Rule 17 CPC for amendment of the written statement was dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent no.1 filed a suit for declaration to the effect that she was the owner in possession of half share of land measuring 70 kanals 15 marlas as described in detail in the head-note of the plaint being legal heir of S. Bhan Singh son of Veer Singh with a consequential relief of permanent injunction restraining the defendant (Gurdit Singh) from alienating the suit property in any manner. In para 3 of the plaint it was stated that the defendant (Gurdit Singh) had got some false, frivolous and wrong entries in the revenue record and thereby got mutation regarding the estate left by S. Bhan Singh sanctioned in his name whereas he has no right, title or interest in the property in dispute of S. Bhan Singh. In the written statement filed by the defendant (Gurdit Singh) a plea raised was that the suit property had vested

in him some 40 years ago as per the *jamabandi* pertaining to the year 1970-71. It was further the stand that the defendant (Gurdit Singh) was owner in possession on the basis of a valid Will executed by S. Bhan Singh in his favour. During the pendency of the suit the defendant (Gurdit Singh) died and the present petitioners and the present respondent no.2 were impleaded as his legal heirs. The suit filed by the plaintiff-respondent was decreed by the Trial Court vide judgment and decree dated 08.08.2011. Aggrieved by the said judgment and decree, an appeal was preferred by the legal heirs of the defendant (Gurdit Singh) i.e. the present petitioners and the present respondent no.2. During the pendency of the appeal, an application under Order VI Rule 17 CPC was filed for amendment of the written statement to introduce the plea that the defendants were owners in possession of the suit property on the basis of a registered Will dated 08.05.1969 executed by S. Bhan Singh in favour of the defendant (Gurdit Singh). The said application was contested by the plaintiff-respondent no.1 and vide impugned order dated 18.01.2014 the lower Appellate Court dismissed the said application. Aggrieved by the said order, the present revision petition has been filed. Though originally the present revision petition was filed by all the legal heirs of the defendant (Gurdit Singh), however, subsequently the original petitioner no.2 (Hira Singh) was ordered to be transposed as respondent no.2 as he did not want to file the present revision petition.

Learned counsel for the petitioners would contend that the law regarding amendment of written statement is more liberal as compared to the law regarding amendment of a plaint. It is further the contention that even at the appellate stage amendment of the written statement can be permitted. Learned counsel for the petitioners, to buttress his argument, has

relied upon the judgment of the Hon'ble Supreme Court in **Sushil Kumar Jain vs. Manoj Kumar & Anr. [2009 (3) RCR (Civil) 899]** and that of this Court in case of **Daljit Singh (deceased) through LRs vs. Sunita (deceased) through LRs & Anr. [2017 (2) PLR 438]**.

Per contra learned counsel for respondent nos.(i), (ii) and (iii) has contended that the amendment of the written statement at this stage would amount to a *de novo* trial. It is further the contention that the stand of the defendant (Gurdit Singh) was that he was owner in possession of the suit property and further in para 3 of the original written statement it was specifically admitted that the defendant (Gurdit Singh) was owner in possession of the suit property on the basis of a valid Will executed by S. Bhan Singh in his favour.

I have heard learned counsel for the parties.

In the present case the plaintiff-respondent no.1 filed a suit for declaration to the effect that she was owner in possession of half share of the land measuring 17 kanals and 15 marlas as described in the plaint. In the written statement the stand taken by the defendant (Gurdit Singh) was that the suit property had vested in him some 40 years ago and that he was owner in possession of the suit property on the basis of a valid Will executed by S. Bhan Singh in his favour. The challenge in the plaint was to the illegal entries having been made in the revenue record in favour of the defendant (Gurdit Singh). The defendant (Gurdit Singh) categorically denied the revenue entries to be incorrect and claimed to be owner of the suit property. The trial on the basis of pleadings and the evidence on the record was conducted. The legal heirs of the defendant (Gurdit Singh), who expired during the pendency of the suit before the Trial Court, were

impleaded as parties. Though, an application is stated to have been made by the said legal heirs for framing of an additional, however, no effort was made by them to file an application for amendment of the written statement. It is only at the appellate stage that the application for amendment of the written statement was filed on the ground that they became parties to the suit on 23.07.2011 and that the omission to mention that the defendant (Gurdit Singh) was the beneficiary of the Will was not willful or intentional. What cannot be lost sight of is that from the very beginning the claim of the plaintiff-respondent no.1 was that some false, frivolous and wrong entries had been made in the revenue record qua the estate left by S. Bhan Singh in favour of the defendant (Gurdit Singh) who had no right, title or interest in the suit property. The defendant (Gurdit Singh) claimed himself to being owner in possession of the suit property taking the stand that the suit property vested in him some 40 years ago. The factum of a Will in his favour was also mentioned in the written statement. There was no reason for the defendant (Gurdit Singh) or his legal heirs for not having placed the relevant evidence on the record or raising detailed pleas regarding the Will. The application which has now been filed at the appellate stage would lead to a *de novo* trial which cannot be permitted. There can be no quarrel with the proposition of law as laid down in the cases of **Sushil Kumar Jain** (*supra*) and **Daljit Singh** (*supra*). However, facts of each case need to be considered individually. Having taken the stand that the defendant (Gurdit Singh) was owner of the suit property 40 years prior to the filing of the suit, there was no reason not to have pleaded the Will, if any, in detail in the written statement.

In view of the above, I do not find any illegality or infirmity in the impugned order passed by the lower Appellate Court. The present revision petition, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

24.01.2023
jk

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