

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.234

Case No. : C. R. No. 120 of 2018

Date of Decision : December 06, 2023

Bhupinder Singh and others Petitioners
vs.
General Public and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Ashok Bhardwaj, Advocate
 for the petitioners.

 Mr. Vivek Suri, Advocate
 for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the order dated 22.11.2017 (Annexure P-6), passed by learned Additional Civil Judge (Senior Division), Chandigarh (for brevity – Trial Court), whereby application filed by the petitioners under Order 6 Rule 17 CPC, for amendment of petition, has been declined.
2. Learned counsel for the petitioners submitted that at the time of filing the main petition for issuance of Succession Certificate, some material averments could not be pleaded, and therefore, by way of amendment of plaint, the petitioners wish to add para no.6-A and para no.6-B in the petition, after para no.6. These two paragraphs, which the petitioners seek to add, read as under :

“6A. *That late Sh. Jagir Singh was not*

having any self acquired property. He was having ancestral property only and the income which late Sh. Jagir Singh was having, was from ancestral property only. The aforesaid amount which stands posted in the account of late Sh. Jagir Singh, was either the sale consideration of the land which he sold and the land sold by him was ancestral property. Further Sh.Jagir Singh had obtained considerable amount from the land acquisition. The amount received from the land acquisition was also out of the land acquired which was ancestral. Therefore the petitioners are entitled to the amount deposited in his account to the extent of ½ share vis-a-vis the respondents No.3-7. Further it is settled law that there cannot be any Will qua the ancestral property. In the present case since the amount in question is the outcome of the ancestral property, therefore, the same is to be treated as ancestral property. The source of income of late Sh. Jagir Singh, from which the amount in question has been deposited and also from which late Sh. Jagir Singh purchased various properties movables and immovable are as under :-

Properties sold and amount received :-

i.	12/08/1981	Rs.49,000
ii.	01/10/1981	Rs.47,500
iii.	19/11/1981	Rs.41,000
iv.	19/11/1981	Rs.29,500
v.	19/11/1981	Rs.29,500
vi.	23/11/1981	Rs.29,500
vii.	05/11/1997	Rs.1,10,000
		(half share Rs. 55,000)

Properties purchased by late Sh. Jagir Singh : -

- i. 23/11/1981 Rs.90,000
- ii. 19/07/1982 Rs.90,000
- iii. 08/01/1982 Rs.95,625

The copies of all the sale deeds containing the description of properties sold and purchased by late Sh. Jagir Singh are attached herewith as Annexures P-1 to P-10.

Apart from the above, late Sh. Jagir Singh obtained an amount of Rs. 48,33,185/- on 20/04/2005 from the Land Acquisition Officer vide award No.577. The Ld.Additional District Judge, vide award dated 20/10/2012, awarded enhanced amount of Rs.13,93,321/- and the same was further enhanced by the Hon'ble High Court vide order dated 17.08.2015 to the tune of Rs.27,03,457/-. In this way late Sh. Jagir Singh received a total amount of Rs.89,29,963/- from the award No.577 out of the land acquired in village Sarangpur U.T. Chandigarh, which was ancestral property.

6B. *That by misleading late Sh.Jagir Singh, the respondents No.3-7, embezzled the amount of late Sh.Jagir Singh and constructed 3 well furnished kothies at village Rai Wali, Tehsil Naraingarh, Distict Ambala, apart from many vehicles and agricultural land. However the petitioners shall be pursuing regarding these properties in appropriate proceedings before the appropriate court.”*

- 3.** Learned counsel for the petitioners further contended that the above-mentioned amendments are necessary for the just adjudication of the lis. No prejudice is going to be caused to the respondents if the said amendment is allowed but the learned Trial Court, vide impugned order

dated 22.11.2017 (Annexure P-6), dismissed the application filed by the petitioners under Order 6 Rule 17 CPC, for amendment of petition. So, the said order be set aside and the application filed by the petitioners for amendment of plaint be allowed. In support of his contentions, learned counsel for the petitioners has relied upon judgments of Hon'ble Supreme Court in Madhvi Amma Bhawani Amma vs. Kunjikutty Pillai Meenakshi Pillai – 2000(3) RCR(Civil) 187, Abdul Rehman and another vs. Mohd. Ruldu and others – 2012(4) RCR(Civil) 481, North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das(D) by LRs – 2008(3) RCR(Civil) 165 and also on a judgment of this Court in M/s Morgan Signature Towers Private Limited vs. M.P.Nagar and another – 2017(4) RCR(Civil) 981.

4. On the other hand, learned counsel for the respondents has argued that the petitioners have not approached the Court with clean hands and have suppressed the material facts from the Court. The case was at the stage of cross-examination of petitioners' witness when they moved the application. Though the case relates to issuance of Succession Certificate qua the amount of deceased lying in the Bank but the petitioners, by way of amendment of petition, want to give a different colour to the litigation. Moreover, the amendment sought by the petitioners is not at all relevant for adjudication of the lis. It was argued that the amount in question was received by the deceased in his own name and it was his sweet will to utilize it in whatever manner he wanted. In addition to this, the Court was also apprised that the petitioners were also benefitted by the purchase of the property and now, they have become greedy and having dishonest intention,

want to claim movable property of the deceased by way of amendment in question, whereas the deceased had bequeathed his property by way of a registered Will, in which the petitioners were specifically excluded. In support of his arguments, learned counsel for the respondents has placed reliance upon judgments of this Court in Smt.Darshana Kumari vs. Smt. Satya Wati – 2000(1) HLR 91 and Rajeev Singla vs. Manjit Singh and others – 2016(4) Law Herald 3556.

5. I have heard the submissions of learned counsel for the parties and perused the record.

6. Learned Trial Court, while entertaining the application filed by the petitioners for amendment of plaint, has passed a well reasoned detailed order, relevant para of which reads as under :-

“4. Present is a petition for grant of succession certificate with respect to movables of late Sh. Jagir Singh on the averments that such movables belong to late Sh. Jagir Singh who died intestate and petitioners being legal heirs were entitled to grant of succession certificate with respect thereto. In reply, respondents no.3 to 7 set up registered Will dated 28.4.2003 alleged to have been executed by deceased in their favour to the exclusion of petitioners, in pursuance to which trial in the present case has already commenced and three witnesses on behalf of petitioners have already been examined-in-chief and their cross-examination deferred. Law is well settled that no amendment to the plaint/petition is permissible after commencement of trial unless it is shown that amendment could not be incorporated earlier

despite due diligence. Reliance in this regard may be placed on the judgments Rajeev Singla Vs Manjit Singh (Supra), Sunil and others vs Jai Parkash and anr. (Supra) and Jaspal Kaur Vs Mohinder Singh (Supra). Nothing of such sort is forthcoming in present case. Rather, the plea that movables subject matter of succession petition are result of proceeds of ancestral property in the hands of late Sh. Jagir Singh, runs counter to the claim in the petition for issuance of succession certificate. Moreover, proceedings for issuance of succession certificate are summary in nature and intricate questions as to whether movables subject matter of succession application are proceeds from the sale of ancestral property in the hands of deceased, are not questions which are either relevant or to be raised only for the purpose of deciding the proceedings under the Indian Succession Act as to the person entitled to the grant of succession certificate with respect to movables left behind by deceased. Consequently, there is no merit in the present application and same is accordingly dismissed.”

7. By way of proposed amendment, the petitioners want to take plea that the property in the hands of Jagir Singh was ancestral property and the income, which late Jagir Singh was having, was from his ancestral property and the amount, which stand deposited in his account, was either the sale consideration of the land, which is sold as the land sold by him was the ancestral property. By way of proposed amendment, the petitioners want to take a vague plea. The ancestral property in the hands of a person is

ancestral if it is held by common ancestor and is inherited by three generations by survivor-ship. All the properties are presumed to be self-acquired unless proved that same are ancestral properties. Proceedings for issuance of Succession Certificate under Section 372 of Indian Succession Act are the limited proceedings. Complicated question whether proceeds, for which Succession Certificate is sought, were received from property which is ancestral, cannot be seen in such proceedings. Succession Certificate is sought with regard to movables left behind by the deceased. Thus, the proposed amendment is not necessary at all. An amendment, which is not necessary for decision of case, cannot be allowed.

8. In the light of above discussion, this Court is of the view that the impugned order dated 22.11.2017 is well-reasoned speaking order and does not suffer from any infirmity, perversity or illegality so as to warrant interference at the hands of this Court. So, the present revision petition is without any merit and the same is accordingly dismissed.

9. Nothing stated herein above shall be construed to be an expression of opinion on the merits of the case.

10. Pending applications, if any, shall stand disposed of along with this judgment.

December 06, 2023 (GURBIR SINGH)
monika JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.