

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

CR-456-2019 (O&M)

Date of Decision : March 23, 2023

Rattan Singh and others

.. Petitioners

Versus

Savita and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anil Kumar Gahlawat, Advocate, for the petitioners.

Mr. R.A. Sheoran, Advocate, for respondents No. 1 and 2.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1485-CII-2019

As prayed for, the application is allowed.

CR-456-2019

In the present civil revision petition, the challenge is to the order dated 07.12.2018 passed by the Civil Judge (Jr. Division), Bhiwani by which, the application of the petitioners under Order 6 Rule 17 read with Section 151 of the CPC for amendment of the plaint has been dismissed.

Learned counsel for the petitioners argues that the civil suit was filed by the petitioners-plaintiffs challenging the transfer of the land in favour of the respondents-defendants by the mother of the parties by way of sale deed. At the time of the filing of the civil suit, the mother of the parties was alive and was arrayed as defendant in the suit.

Learned counsel for the petitioners submits that though in the written statement, it was mentioned that the mother had executed a Will but no date and time of the said Will was mentioned in the reply and even otherwise, as the mother i.e. executant of the Will was alive at the time of filing of the suit as well as written statement, the alleged Will was of no consequences as the Will could have been changed at any given point of time before death. Learned counsel for the petitioners further submits that only during the leading of the evidence, and that too after the death of the executant i.e. the mother, the factum of the Will along with date and contents was brought on record which necessitated the challenging of the said Will by amendment.

Learned counsel for the petitioners argues that the said application has been dismissed by the trial Court by the impugned order dated 07.02.2018 only on the ground that once the objection of Will was already taken in the written statement, the amendment is only to fill the lacuna, which cannot be allowed.

Learned counsel for the respondents submits that once the factum of Will was mentioned in paragraph 6 of the reply, it was incumbent upon the plaintiffs-petitioners to challenge the same at the said stage but as the petitioners-plaintiffs failed to challenge the said Will even after filing of the written statement, the rejection of the application by the trial Court is perfectly valid for filling up the lacunas.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, it is conceded position that at the time when the civil suit was filed challenging the sale deed, which was effected

by the mother of parties in favour of the respondents-defendants, the mother was alive. Though the factum of a Will was mentioned but no details including the date and contents was given either by the mother or even by the beneficiary in the written statement.

In the absence of any such details given, there is no occasion to challenge the same at the hands of the petitioners-plaintiffs.

Even otherwise, at the time of filing of the written statement, the executant of the Will was alive, hence the Will was not an executable document at the relevant time. That being so, the rejection of the application by the trial Court on the ground that the lacunas are to be filled up by way of present application is not the correct appreciation of the facts of the present case.

Once, the Will has been brought on record during the evidence, the petitioners-plaintiffs have full right to challenge the same on the ground available in accordance with law. The order dated 07.02.2018 passed by the trial Court is set aside and the application filed by the petitioners-plaintiffs under Order 6 Rule 7 read with Section 151 of the CPC for amendment of the plaint is allowed. The trial Court is directed to proceed in accordance with law.

As the civil suit is pending for the quite some time, it will be appreciated that the proceedings qua the suit are culminated as expeditiously as possible.

March 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No