

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 3124 of 2018****Date of Decision: 08.08.2023**

Sanjeev Kakkar and Another

... Petitioner(s)

Versus

Robby Kakkar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Kulwant Singh, Advocate
for the petitioner(s).Mr. Hitesh Ghai, Advocate
for the respondent.**Anil Kshetarpal, J.**

1. This revision petition has been filed by the plaintiffs to assail the correctness of the order dated 16.04.2018 passed by the Civil Judge (Junior Division), Ludhiana, while dismissing the plaintiffs' application for the amendment of the plaint.

2. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

3. The plaintiffs filed a suit for grant of decree of partition by metes and bounds with respect to the property No. B-XXIV-2777/3. The defendant, while filing the written statement, also filed a counter claim with respect to the property measuring 250 square yards comprised in khasra No. 3375/2421/165-158/2. The counter claim filed by the defendant was contested by the plaintiffs. Some evidence was led by the plaintiffs. The

defendant also led evidence. The plaintiffs were called upon to lead evidence

Civil Revision No. 3124 of 2018

in the counter claim. At this stage, the plaintiffs filed an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, for permission to amend the plaint and written statement filed against the counter-claim. In substance, the amendment was sought for the purpose of allowing the defendant to disclose the old municipal number of the property and for permission to incorporate that the property, which is the subject matter of the counter claim, was bequeathed in favour of the plaintiff No.1 by his father vide registered Will executed on 13.01.2000. The trial Court dismissed the application.

4. The learned counsel representing the plaintiffs (petitioners herein) contends that he does not wish to press the revision petition with respect to the amendment of plaint concerning the old municipal number. However, he prays that the plaintiffs be permitted to amend the plaint to enable them to incorporate the registered Will executed by their father bequeathing the property which is the subject matter of counter claim in favour of the plaintiff No.1.

5. On the other hand, the learned counsel representing the respondent (defendant before the trial Court) claims that in a separate suit filed by the defendant, the plaintiffs propounded the Will dated 13.01.2000, but failed to prove the same, hence, the aforesaid suit was decreed. He submits that the first appeal filed by the plaintiffs was also dismissed for non-prosecution.

6. This Court has considered the submissions. It has been noticed that the suit was filed on 29.09.2006. In other words, it is pending for the last 17 years before the trial Court. At the same time, there is a registered

Will which appears to be relevant for the proper adjudication of the issues involved.

7. In view of the above, it would not be appropriate to order the *de novo* trial which would further delay the decision of the suit.

8. Keeping in view the aforesaid facts of the case, it is ordered that the plaintiffs will be permitted to lead evidence to prove the Will. The defendant will also be granted an opportunity to lead evidence. Both the parties shall be given only two opportunities each within a span of one month. Thereafter, the Court will proceed to decide the suit. The evidence led by the plaintiff to prove the Will dated 13.01.2000, shall not be excluded for lack of the pleadings. This opportunity shall be subject to payment of costs of ₹5,000/- payable to the respondent.

9. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

August 08, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No