

CR-5614-2017 (O&M)

-1-

242

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

**CR-5614-2017 (O&M)
Date of Decision : 19.04.2023**

Smt. Prem Lata

....Petitioner

VERSUS

Baljeet and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.C. Goyal, Advocate for the petitioner.

Mr. Sanjay Jain, Advocate for respondent Nos.1 and 2.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 06.07.2017 whereby an application filed by the plaintiff-petitioner for amendment of the plaint to challenge the validity of the Will has been rejected by the Trial Court.

The brief facts relevant to the present *lis* are that the suit for declaration was filed to the effect that the plaintiff-petitioner herein, defendants-respondent Nos.1 and 2, proforma defendant-respondent Nos.3 and 4 and plaintiff-respondent No.5 herein were owners to the extent of 1/6th share each in the land comprised in khewat/khatauni No.13//13/14, khasra No.124 (2-0) to the extent of 3/40 share each situated at Village Dharampur,

H.B No.152, Tehsil Kalka, District Panchkula and land comprised in khewat/khatauni No.109/229, khasra No.179 (30-8) to the extent of 31/3040 share and khewat/khatauni No.147/277 khasra No.131 (4-12), to the extent of 1/23 share situated at Village Bitna, H.B. No.153, Tehsil Kalka, District Panchkula. On 19.09.2013 a written statement was filed wherein a Will dated 20.11.2011 was set up by defendant-respondent Nos.1 and 2 in their favour alleged to have been executed by their father. The present application for amendment of the plaint was filed on 31.03.2015 seeking to challenge the Will dated 20.11.2011. Reply to the application was filed. Vide the impugned order the application was dismissed on the ground that the plaintiff-petitioner had failed to show how these facts came to her knowledge or that she had acted with due diligence. Hence, the present revision.

Learned counsel for the plaintiff-petitioner would contend that the Trial Court has dismissed the application on the ground that neither the source of new knowledge or substantial ground for introducing the proposed amendments have been shown. It is further the contention of the counsel for the plaintiff-petitioner that the plaintiff-petitioner gained knowledge of the alleged Will dated 20.11.2021 only when the written statement was filed and the Will was set up by defendant-respondent Nos.1 and 2. Learned counsel would further contend that till the date of knowledge i.e. from the time of the filing of the written statement, the challenge to the Will would be within the limitation and not time barred. Further, the counsel has contended that no prejudice would be caused to the defendants-respondents in case the application is allowed however great injustice would be caused to the

plaintiff-petitioner, who is the sister and who has been deprived of her right in the property. Learned counsel for the plaintiff-petitioner has further pointed out that the Will itself is patently fraudulent inasmuch as the left hand and right hand thumb of father of the parties were amputated. However the Will is shown to be thumb marked (right thumb impression) by the testator.

Per contra, learned counsel for the defendant-respondent Nos.1 and 2 contends that there is no due diligence and in the absence of due diligence, parties cannot introduce the amendment. In support of his argument he has relied upon the judgment of the Supreme Court in the case of **Pandit Malhari Mahale Vs. Monika Pandit Mahale & Ors. [2020 (2) BCR 480]**.

Heard.

In the present case, the suit was filed on 16.08.2013 and the written statement was filed on 19.09.2013. The application for amendment has been filed on 31.03.2015 i.e. after the framing of the issues. The plaintiff-petitioner no doubt has been remiss in not filing the application earlier, however, the reasoning given by the Trial Court for dismissing the application on the ground that there was no source of new knowledge or substantial ground for introducing the proposed amendment is not sustainable in law. The amendment sought is only to challenge the validity of the Will which has been introduced in the written statement by the defendant-respondent Nos.1 and 2. In the proposed amendment it has categorically been stated that the Will came to the knowledge of the plaintiff-petitioner only after the written statement was filed.

The judgment relied upon by the counsel for the defendant-respondent Nos.1 and 2 in case of **Pandit Malhari Mahale** (supra) would not be applicable to the facts of the present case inasmuch as in the said case the amendment sought was not based on the case set up by the defendants in the written statement. In the present case the Will has been set up in the written statement and for the first time came to the knowledge of the plaintiff-petitioner after the filing of the written statement.

In the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.** [Civil Appeal No.5909 of 2002 arising out of SLP (C) No.22443 of 2019 decided on 01.09.2022] their Lordships of the Supreme Court have held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
- (ii) to avoid multiplicity of proceedings, provided*
 - (a) the amendment does not result in injustice to the other side,*
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical*

approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already

pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)".

In the present case, the amendment would be necessary for determining the real question in controversy. Learned counsel for the defendant-respondent Nos.1 and 2 has not been able to show how the said amendment would cause any injustice or prejudice which could not be compensated by way of payment of costs. The present amendment would also avoid multiplicity of proceedings.

In view of the above, the present revision petition is allowed.

The impugned order is set aside. Consequently, the application for

CR-5614-2017 (O&M)

-8-

amendment of the plaint filed by the plaintiff-petitioner stands allowed, subject to payment of Rs.30,000/- as costs to be paid to the defendant-respondents. It is, however, clarified that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Pending applications, if any, also stand disposed off.

April 19, 2023
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(ALKA SARIN)
JUDGE

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