

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

CR-6143-2013(O&M)

Date of decision:-28.3.2023

Gurdev Kaur and another

...Petitioners

Versus

Bhag Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

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

Mr.S.K. Bawa, Advocate
for respondents No.2 to 4, 7 and 8.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 18.12.2012 passed by Additional District Judge, Ludhiana in Civil Appeal No.91 dated 18.10.2011 titled 'Gurdev Kaur and another Versus Bishan Kaur and others' vide which amendment of the plaint has been declined at appellate stage.

2. Briefly stated, facts of the case are that plaintiff Gurdev Kaur and Harbans Kaur had brought a suit against defendants Bishan Kaur and others, seeking joint possession as owners in equal shares of the suit land measuring 17 kanals 18 marlas left by Harnek Singh situated at village

Purain, Tehsil Jagraon, District Ludhiana on the basis of natural succession of Harnek Singh after setting aside of Will dated 9.6.1994 allegedly executed by Harnek Singh in favour of defendants No.2 to 4; in addition to that seeking a decree for grant of permanent injunction. That civil suit was dismissed by the Court of Additional Civil Judge (Sr.Divn.), Jagraon vide judgment and decree dated 12.8.2010.

3. Feeling aggrieved, the plaintiffs had preferred an appeal before learned District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana. During the course of proceedings, the appellants/plaintiffs had filed an application under Order 6 Rule 17 CPC for amendment of the plaint by adding following lines in para No.4 of the plaint after the word 'Jagraon' and before para No.5 in the plaint:-

“Thereafter the appellant No.1 and said Harnek Singh could not pull together in their married life and an agreement was executed between the appellant No.1 and said Harnek Singh on 23.6.1979 in the presence of respectable of the society and after admitting all the terms and condition of the said agreement the appellant No.1 and Sh.Harnek Singh signed on the same in the presence of marginal witnesses. The appellant No.1 was started living at her parental house along with appellant No.2. Copy of the agreement dated 23.6.1979 is attached herewith.”

4. That application was contested by the respondents/defendants and vide the impugned order, the application was dismissed, leaving the appellants/plaintiffs aggrieved and they have approached this Court by

way of filing the present revision petition.

5. Notice of the revision petition was issued to the respondents/defendants and respondents No.2 to 4, 7 and 8 have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. The amendment of pleadings is dealt with by Order 6 Rule 17 CPC. As per the proviso, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In this case, the civil suit had been decided on merits and it was after about three years of the filing of the appeal before District Court, Ludhiana, that application for amendment was filed. The proposed amendment is such that it cannot be said that despite due diligence, the plaintiffs could not raise that matter before commencement of the trial.

8. Learned Additional District Judge, Ludhiana vide a detailed and well reasoned order keeping in view the law on the subject has rejected the application. The impugned order passed by the Court below is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The discretion has been exercised by the Court of Addl.District Judge, Ludhiana in a proper and appropriate manner. The gross delay in filing of the application has been taken into view so as has been the fact that there was no whisper about the alleged agreement executed by the deceased

husband of Gurdev Kaur on 23.6.1979, rather Gurdev Kaur had claimed a share in the estate of Harnek Singh being his legal heir by way of natural succession. It has been observed that by way of filing the application, the plaintiffs wanted to retract what they had pleaded in the plaint earlier. The proposed amendment was not found to be necessary for proper adjudication of controversy between the parties. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

9. Finding no merit in the revision petition, the same stands dismissed.

The interim order dated 8.10.2013 passed by this Court staying further proceedings before learned Additional District Judge, Ludhiana thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

28.3.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No