

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(235)

CR No. 6493 of 2017  
Date of Decision : 14.02.2023

Gurbax Kaur and others

...Petitioners

Versus

Shinda Ram and others

...Respondents

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Anish Setia, Advocate with  
Mr. Surinder Singh, Advocate for the petitioners.

Ms. Ramandeep Kaur, Advocate for  
Ms. Himani Kapila, Advocate for the respondents.

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**Harsimran Singh Sethi J. (Oral)**

The present civil revision petition has been filed challenging the order dated 13.07.2017 (Annexure P-1) passed by the trial court, by which, the application under Order 6 Rule 17 CPC filed by the petitioners-plaintiffs seeking amendment of the plaint, has been rejected.

Learned counsel for the petitioners-plaintiffs argues that in the present case, the challenge is to the Will dated 23.08.1995 but while filing the plaint, the reasons for declaring the said Will as fabricated, could not be mentioned along with the dates, which is the requirement of Order 6 Rule 4 CPC. Learned counsel for the petitioners-plaintiffs further submits that though the Will is under challenge and it is already pleaded that the Will is a forged document, the only expansion of the said argument is to be done in the plaint so as to fulfill the requirement of Order 6 Rule 4 CPC coupled

with the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 473 of 1976 titled as ***Varansaya Sanskrit Vishwavidalya Varanasi and another Vs. Dr. Raj Kishore Tripathi and another***, decided on 26.11.1976. Learned counsel for the petitioners-plaintiffs argues that the amendment has been disallowed on the ground that the same has been filed after the commencement of the trial and at the stage when certain witnesses have already been examined whereas, keeping in view the fact that the petitioners-plaintiffs' evidence is yet to be closed and the petitioners-plaintiffs only need to mention certain averments in the plaint without there being any change of issues etc., no prejudice will be caused to the respondents-defendants in case, the said amendment is allowed, especially when the petitioners-plaintiffs are ready to compensate the respondents-defendants for the delay, which has occurred due to seeking of amendment of the plaint.

Learned counsel for the respondents-defendants submits that once the trial had already commenced, the present application has been filed after a period of four years of filing the suit, which is only to delay the proceedings and the prayer for amendment has rightly been rejected by the court below and, therefore, the present civil revision petition may kindly be dismissed.

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

It is not disputed before this Court that the challenge is to the Will dated 23.08.1995 on the ground that the same is a forged and fabricated document. Once, the said fact has been stated in the suit and the

petitioners-plaintiffs only want to expand the fact by stating corroborating facts so as to prove the same by way of an evidence, no prejudice will be caused, especially when the evidence of the petitioners-plaintiffs is yet to conclude and no issue is to be re-framed in any manner. The court below has only gone on the issue that the petitioners-plaintiffs should have been vigilant during the filing of the suit, which ground alone cannot be taken into account ignoring other aspects of the case.

In the present case, the averment of the petitioners-plaintiffs is that they had submitted all the documents with the counsel so as to be incorporated but, the same were not incorporated, which fact should not cause prejudice to the respondents-defendants as the dispute between the parties needs to be adjudicated on the basis of the merits.

Keeping in view the said fact, the order dated 13.07.2017 (Annexure P-1) passed by the trial court is set-aside and the prayer of the petitioners-plaintiffs for amendment of the plaint is allowed subject to the payment of ₹25,000/- as cost to the respondents-defendants. The amended plaint will only be accepted in case, the same is accompanied by the cost.

The present civil revision petition is allowed in above terms.

**February 14, 2023**  
*kanchan*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*