

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

CR-8316-2016 (O&M)
Date of Decision:-**14.11.2023**

BALBIR KAUR

... Petitioner

Versus

SURJAN SINGH & ORS.

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Sandeep Sharma, Advocate for the petitioner.

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KARAMJIT SINGH, J. (Oral)

1. By way of the instant revision petition, the petitioner/defendant No.1 has assailed impugned order dated 18th November, 2016 (Annexure P-6), passed by the Court of Civil Judge (Junior Division), Moga, whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of written statement has been declined.
2. The brief facts of the case are that respondent No.1-Surjan Singh filed suit for separate possession being owner of half share by way of partition of suit property. The suit is being contested by the petitioner, who filed written statement, wherein it is pleaded that the suit property had fallen to the share of Hamir Singh in a family settlement and petitioner succeeded the suit property on the basis of Will executed by Hamir Singh in her favour. During the pendency of the suit, petitioner filed an application seeking amendment of the plaint in order to take additional plea that the suit filed by respondent is bad for partial partition as unpartitioned property bearing Khasra No.399(3-10)

situated in village Chuhar Chak-II has not been included in the plaint by respondent No.1 at the time of filing of suit for partition. The said application was contested by respondent No.1 and the learned trial Court dismissed the said application on the ground that the amendment has been sought at belated stage and will result in *de-novo* trial.

3. Being aggrieved, the petitioner filed the present petition. Its notice was issued to the respondents. Main contesting respondent in this case is respondent No.1 only. Earlier it was brought to the notice of this Court that respondent No.1 has died. Today the counsel for petitioner made statement at bar that he is unable to get any instructions with regard to LR's of respondent No.1.
4. This civil revision petition is pending since 2016 and the LR's of respondent No.1 have not approached this Court to implead them as a party in the present petition.
5. I have heard the counsel for the petitioner.
6. The counsel for the petitioner while assailing the impugned order *inter alia* contends that by way of proposed amendment, no new case is being introduced by the petitioner and the proposed amendment is not going to cause prejudice to the plaintiff/respondent No.1. So prayer is made that the proposed amendment be allowed for the just decision of the case.
7. I have considered the contentions raised by counsel for the petitioner.
8. By way of amendment the petitioner intends to take additional objection that the suit is bad for partial partition. This Court is of the

view that the proposed amendment is not going to cause injustice or prejudice to the other party. Further the proposed amendment is not time barred and rather is necessary for proper adjudication of the controversy between the parties. Furthermore, the respondent by seeking proposed amendment is not withdrawing any admission made by her in the original written statement. The proposed amendment will not result in divesting the other party of a valuable right, which accrued with passage of time. The proposed amendment could not be disallowed just on the ground that the same has been sought at the belated stage. This Court is also of the view that in case the proposed amendment is allowed, then it will not amount *de-novo* trial. In the given circumstances, the impugned order dated 18th November, 2016 (Annexure P-6) is not sustainable and deserves to be set aside.

9. Consequently, the present petition is allowed and impugned order is set aside and the application filed by the petitioner under Order 6 Rule 17 CPC seeking amendment of written statement is allowed, subject to cost of ₹5,000/- to be deposited by the petitioner with the District Legal Services Authority, Moga by the next date fixed before the trial Court and the petitioner is also directed to appear on the date already fixed in the suit; and is permitted to file amended written statement, as prayed for.

14.11.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No