

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

CR-8905-2017 (O&M)

Reserved on: 19.04.2023

Date of pronouncement: 25.04.2023

Sneh Lamba (deceased) through her legal heirs

...Petitioners

Versus

Bimla Rani (deceased) through her legal heirs and others

...Respondents

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

Present: Mr. H.S. Kohli, Advocate with
Mr. Amit Sherawat, Advocate for the petitioner.

Mr. S.M. Sharma, Advocate
for respondents No.2 (ii) and 4.

H.S. MADAAN, J.

Under challenge in this revision petition is order dated 14.11.2017 passed by the Court of Civil Judge (Jr. Divn.) Ambala in civil suit titled as 'Mrs. Madhu (deceased) through her legal heirs and others vs. Bimla Rani (deceased) through her legal heirs and others' vide which an application filed by the plaintiffs seeking amendment of the plaint had been dismissed.

2. Briefly stated facts of the case are that Mrs. Madhu (since dead) now represented by her legal representatives along with her sisters Mrs. Veena and Mrs. Sneh Lamba, all of them being married daughters of Satpal Bhambari had brought a suit for partition by metes and bounds of H.No.1, situated at Kanshi Nagar, Model Town, Ambala City having an

area measuring 722 sq. yards with a consequential relief of permanent injunction restraining the defendants not to dispose of/alter such house without getting it partitioned; in that suit, they had impleaded their mother Smt. Bimla Rani, brother Ashok Bhambari (since dead) now represented by his LRs, another brother Dalip Kumar Bhambari, Smt. Parveen Bhambari wife of pre-deceased brother Pardeep Bhambari as defendants; they had further impleaded Sonia Kacher, Sahlu Chadha and Reena Makkar as proforma defendants.

3. The case of the plaintiffs is that the house in question was earlier owned by Satpal Bhambari, who died intestate on 27.12.1981; Sh. Satpal Bhambari had left behind his wife Smt. Bimla Rani, four daughters, three of them being plaintiffs and three sons as his legal heirs; in that way, the plaintiffs have got 1/8th share in the house in question; the house is still joint; the plaintiffs had filed a suit to get a separate possession of their shares by way of partition of the house.

4. On getting notice, the defendants appeared. Defendant No.1 had filed a separate written statement wherein she pleaded that the house in question was self acquired property of Satpal Bhambari who was absolute owner of the same. He had executed a legal and valid Will dated 07.08.1979 in favour of his wife Smt. Bimla Rani, as such, after death of Satpal Bhambari, his widow Bimla Rani became absolute owner of the house in question with which no other person including the children of the deceased have got any connection. The plaintiffs did not inherit any share in the house in question, therefore, they have no right to file the suit

for separate possession of their share by way of partition.

5. Defendants No.2 and 4 in a separate written statement filed by them supported the claim of defendant No.1.

6. During the course of proceedings, the plaintiffs filed an application seeking amendment of the plaint so as to seek a declaration that the Will allegedly executed by Satpal Bhambari propounded in defence by the defendants, is a patently a fabricated document which surfaced subsequent to institution of the suit coined solely with a motive to defeat the rights of the plaintiffs, in order to succeed in the left over assets of Satpal Bhambari. They further sought a declaration that defendant No.1 in collusion with defendants No.2 and 3 had executed a gift deed on 18.12.2012 in favour of Rajesh Kumar Bhambari son of defendant No.2 making gift of portion of the suit property to him and such amendment is necessary to avoid multiplicity of proceedings.

7. The application was resisted by the contesting defendants praying for its dismissal.

8. The trial Court vide impugned order had dismissed the application. For ready reference, the operative part of the order which runs as follows is being reproduced:-

“6. Perusal of the file shows that the plaintiffs have filed the present suit for partition of a house bearing no.1, Kanshi Nagar, Model Town, Ambala City, bearing house tax no.489/1-289/A, measuring 722 square yards with a consequential relief of permanent injunction restraining the defendants from disposing off/selling/ altering the same without getting the same partitioned. However, now by way of the present application, the plaintiffs want to amend their plaint also for

passing a decree of declaration to the effect that the Will dated 07.08.1979 allegedly executed by Shri Satpal Bhambari now deceased thereby bequeathing the suit property for the life time in favour of defendant No.1 and thereafter, to be partitioned in equal shares in favour of his own sons, is a fabricated document and does not confer any right in favour of defendants in respect of the suit property with a further declaration to the effect that the Gift Deed dated 18.12.2012 executed by defendant No.1 in favour of Shri Rajesh Kumar, in respect of a portion of the suit property is also null and void as defendant No.1 had no right title or authority in this regard; and any other transaction made by the defendants including defendant No.1 creating or otherwise transferring any right regarding the suit property in favour of any body is deemed as null & void. However, it is pertinent to mention here that by way of this application, he is also seeking the relief of declarations which will change the nature of the entire suit and is not permissible as per law. If the plaintiffs want to seek the relief of declaration as prayed for, at this stage, they may file a separate civil suit for the same as per law. However, the present application for amendment of the plaint by adding the relief of declaration which is definitely changing the nature of the suit, can not be allowed at this stage.”

9. This order has left the plaintiffs aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was given to the respondents. Respondents No.2(ii) and 4 have put in appearance through counsel whereas remaining respondents did not appear despite service.

10. I have heard learned counsel for the parties besides going through the record and I find that the impugned order is quite detailed,

well reasoned and it does not suffer from any illegality or infirmity. The plaintiffs have filed a suit for partition by metes and bound of the house in question claiming a share in that house being natural heirs of earlier owner Satpal Bhambari whereas, defendants No.1, 2 and 4 claimed that Satpal Bhambari had executed a legal and valid Will in favour of defendant No.1, therefore, after his death, she became absolute owner of the house in question. The dispute between the parties is with regard to as to whether the plaintiffs had acquired any share in the suit by way of natural succession, if so, whether they can get the house partitioned by metes and bounds whereas the contesting defendants are basing their claim on testamentary succession in favour of defendant No.2. Testamentary succession is a deviation from the natural succession. It is for contesting defendants to establish that the deceased had executed any Will in favour of defendant No.1, resultantly, after death of Satpal Bhambari, his wife Bimla Rani became exclusive owner in possession of the house in question. Unless the Will is proved in accordance with law by the contesting defendants, it is to be taken that the house in question had devolved upon all the natural heirs, including the plaintiffs, of Satpal Bhambari. Therefore, onus is heavy upon the contesting defendants to prove execution of Will as claimed by them and there is no necessity of plaintiffs getting the plaint amended so as to seek a declaration that the Will set up by the contesting defendants is a false and fabricated document. The plaintiffs are ill-advised in the matter and they are taking upon themselves to discharge negative onus which is not required unless

contesting defendants prove the execution of Will claimed by them, they would be unable to establish their case with regard to gift deed said to have been executed by defendant No.1 in favour of son of defendant No.2. Any document executed by defendant No.1 would survive if execution of Will in question is proved, otherwise, the gift deed could not be held to be valid beyond share of defendant No.1 if the property of Satpal Bhambari goes by natural succession. The beneficiary under the gift deed shall sink or swim with defendant No.1 and cannot claim to have any independent right in the suit property. Furthermore, if the proposed amendment is allowed then certainly the nature of the suit would change. The amendment of plaint cannot be allowed simply to avoid multiplicity of proceedings irrespective of the fact that the proposed amendment is relevant to the controversy in the suit or not.

11. There is no illegality or infirmity in the impugned order which might have called for interference by this Court while exercising revisional jurisdiction. There is no element of arbitrariness or perversity in the order in question. The revision petition is found to be without merit and is dismissed accordingly.

12. Interim order passed in favour of the petitioners on 18.12.2017 staying further proceedings before the trial Court thus comes to an end.

13. Nothing discussed here-in-above shall have any bearing on the merits of the case.

25.04.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No