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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-1849-2023 (O&M)****Date of decision: March 23, 2023**

Captain Ranbir Singh Pathania

....Petitioner

versus

Kamla Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Nisha Rana, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Revision petition herein is to set aside impugned order dated 30.01.2023 (Annexure P-10) passed by learned Civil Judge (Junior Division), Garhshankar, whereby application filed by petitioner-plaintiff under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for amendment of plaint was dismissed.

2. Learned counsel for the petitioner-plaintiff contends that petitioner-plaintiff filed a suit for declaration to the effect that respondent-defendant is only a limited owner of suit property and also for an injunction against the defendants. Vide order dated 16.05.2019, learned Court below directed the parties to maintain status quo. Petitioner-plaintiff filed an application for amendment of plaint stating that in Para-3 of the existing plaint, it was mentioned that Gurbax Singh died and he was succeeded by respondent-defendant No.1 on the basis of one un-registered Will. Further, plaintiff had mentioned in 15th line of sub para of Para-3 of the existing plaint that Original Will was attached with revenue record in respect of the suit land in favour of respondent-defendant No.1, however, copy of the same will be produced after getting the same from the revenue record or from respondent-defendant No.1. Plaintiff also filed replication.

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3. The plaintiff- petitioner moved application for amendment of the plaint. It is stated therein that now the plaintiff searched his record and found the copy of the said unregistered will dated 20.10.1982 whereas its original is in possession of defendant No. 1. Hence, he seeks to amend the plaint and state therein that “the original will is lying with defendant No. 1, whereas the copy of the same is produced on the file” by substituting the relevant existing recitals the plaint.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. I have heard learned counsel for petitioner and perused the case file.

6. The impugned order is premised on the following reasoning:

“Perusal of the file shows that the case is fixed for the plaintiff evidence. Issues in the present case were framed on 01.12.2018 and since then the plaintiff has availed numerous opportunities to lead the evidence and has taken more than 4 years to conclude the evidence but did not move any such application. Now when the case is at its fag end and the plaintiff has moved the application in order to delay the proceedings of the case. Since the plaintiff has filed this very suit in the year 2017 only and by taking the such stand would amounting to re-trial. That the earlier pleadings with regard to copy of Will deposited with the Revenue Authorities is clear cut admission of the fact that the copy of Will is not with the possession of the defendants. By impleading the new pleadings with regard to the factum of possession of Will with the defendant is amounting to withdrawal of the admission which is impermissible and it is withdrawal if allowed, would prejudice to the parties to the suit. As such the present application for impleadment of the fact is hereby disallowed.”

7. Trial is at a very nascent stage and delay even if any, is to the detriment of petitioner herein, who is plaintiff before learned Trial Court.

8. In my opinion, the proposed amendment would not really amount to withdrawal of an admission on any material aspect of the case already pleaded or change the overall complexion of the existing plaint. In fact, the production of the copy of Will seems necessary for a just and proper adjudication of the main

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controversy in the suit. The proposed amendment of the plaint, if allowed, would not cause any prejudice to the opposite side.

9. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties.

10. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/plaintiff for amending plaint. To that extent, impugned order is set aside and the revision petition is allowed.

11. Disposed of, accordingly.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 23, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No