

CR-4630-2019 (O&M)

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

**CM-6165-CII-2023 in/and
CR-4630-2019 (O&M)
Date of Decision: 13.04.2023**

Kanchan Lata

...Petitioner

Versus

Ashok Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arjun Lakhanpal, Advocate (Legal Aid Counsel)
for the applicant/petitioner.

Mr. Hitesh Ghai, Advocate
for respondents No.1, 2, 3(c) and 4.

ARUN MONGA, J. (ORAL)**CM-6165-CII-2023**

For the reasons stated in application, same is allowed. Order dated 14.03.2023 is recalled. Main case is restored to its original number and the same is taken up for hearing on Board today itself.

CR-4630-2019

Petition herein is for setting aside order dated 10.04.2019 (Annexure P-2) passed by Ld. Civil Judge (Jr. Division), Payal, whereby an application for amendment of plaint was partially allowed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner filed a suit for declaration to the extent of her share out of suit land measuring 75 Bighas 12 Biswas situated within the revenue estate of Payal, District Ludhiana. The said property is an ancestral coparcenary property in which petitioner/plaintiff has birth right being a coparcener and father of petitioner, namely, Sh. Bal Krishan (now deceased) had no authority to execute any alleged Will dated 26.04.1994 in favour of defendants and therefore the mutation entry regarding the

estate on the basis of alleged Will and subsequent transfer made by respondents No.1 to 4 in favour of respondent No.5 is totally wrong, illegal, null & void and not binding on the rights of the petitioner.

2.2. Petitioner had filed an application under Order 6 Rule 17 CPC for amendment of plaint which was partially allowed by Ld. trial Court vide impugned order, as mentioned above *qua* the wrong mentioning of the date of the Will i.e., dated 25.09.1991.

3. Learned counsel for petitioner submits that at the time of filing of suit he did not mention in the suit that his father was having 15th share in land comprised in Khasra Nos.3263/274 (0-2), 3259/274 (0-6) 3261/274 (0-5), 3258/274 (1-4), 3266/274 (0-8), 3264/274 (1-0), 3260/274 (0-2) and 3262/274 (0-1) as per jamabandi for the year 1987-88, situated within the revenue estate of Payal-1, HB No.235, Tehsil Payal, District Ludhiana and 2/5th share out of land measuring 0B-12B comprised in Khasra No.13/23, Khasra No.682/1 (0-12) as per jamabandi for the year 2012-13, situated within the revenue estate of Village Payal-2, HB No.235, Tehsil Payal, District Ludhiana, as the Halqa Patwari did not issue the complete jamabandis earlier.

3.1. Learned counsel for petitioner further submits that amendment is very formal in nature and will not change the fundamental character of the plaint and will also not cause prejudice to opposite party.

4. Learned counsel for respondents submits that change of Khasra numbers would certainly change the nature of suit. He further submits that there is a colossal delay in seeking the said amendments.

5. After having heard learned counsel and gone through the record, I am of the view that neither the nature of the suit is likely to be changed if the proposed amendment is allowed nor, even otherwise, any additional evidence is required to be led *qua* the same as has been undertaken by learned counsel for petitioner. Further, no prejudice would be caused to defendant/respondents if the amendment is allowed.

That apart, reasons given by petitioner for not being able to mention the details of revenue record which are proposed to be now pleaded seem to be genuine since he was not in seisin of the same as the concerned revenue official (Halqa Patwari) did not supply the complete requisite information.

6. Furthermore, I may also hasten to add here that it appears that Ld. trial Court got rather over-swayed from the fact that allowing of the said amendment would delay the trial since the plaintiff’s evidence had already been closed. As pointed earlier herein above, since the plaintiff’s counsel (petitioner herein) has already undertaken that he will not adduce any additional evidence *qua* corresponding pleadings, in the absence thereof, I am unable to accept the argument of learned counsel for respondents that it would amount to change the nature of suit and would cause delay in trial. Even otherwise, there was already an interim order of stay in passing of final order which might have already caused some delay.

7. Further, the argument that there has been colossal delay in seeking amendment is also insignificant. As long as it has come on record that it is not barred by limitation, same can be permitted at any stage, even at the stage of first appeal.

8. Consequently, the revision is allowed. Impugned order is modified and the application for amendment of plaint stands allowed in its entirety.

9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 13, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No