

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

CR-4002-2022(O&M)

Reserved on:-22.5.2023

Date of Pronouncement:-26.5.2023

Rajinder Singh

...Petitioner

Versus

Gulzar Singh and others

...Respondents

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

Present: Mr.Ashish Gupta, Advocate for
Mr.Vikram Singh, Advocate for the petitioner.

Mr.Sanjay Jain, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 29.8.2022 passed by Additional Civil Judge (Sr.Divn.), Ambala vide which an application under Order 6 Rule 17 CPC filed by defendant No.1 Rajinder Singh for amendment of written statement had been dismissed.

2. Briefly stated, facts of the case are that plaintiffs Gulzar Singh, Avtar Singh and Kuljinder Singh, all sons of Sh.Sewa Singh had brought a suit against their brother - Rajinder Singh, father – Sewa Singh, mother – Ishar Kaur, two other brothers – Didar Singh and Jatinder Singh and sister Smt.Inder Kaur, seeking a declaration that Award/judgment passed in Civil Suit No.5 of 8.1.2009 decided on 10.1.2009 titled as 'Rajinder Singh Versus Sewa Singh & Smt.Ishwar Kaur' decided by Samjhauta Sadan/Permanent Lok Adalat, Ambala by virtue of which the

land situated at village Tandwali, Tehsil Barara, District Ambala, fully detailed and described in the head-note of the plaint and mutation sanctioned on the basis thereof are wrong, illegal, unauthorized, collusive, result of fraud and misrepresentation and not binding on the rights of the plaintiffs and defendants No.3 to 6 besides seeking a decree for joint possession of the same and in addition to that craving for grant of permanent injunction restraining defendant No.1 or persons claiming under him from transferring the property in any manner.

3. On getting notice, the defendants appeared and filed written statements. During the course of proceedings, defendant No.1 filed an application for amendment of the written statement contending that Sh.Sewa Singh – defendant No.2 father of plaintiffs, defendant No.1 and defendants No.4 to 6, who was husband of defendant No.3 Ishar Kaur and regarding whose property the plaintiffs had filed the suit had expired bequeathing the suit property to defendant No.1 and in case the Court comes to the conclusion that award is liable to be set aside in that case defendant No.1 has become owner of the property, which was in the name of Sh.Sewa Singh on the basis of legal and valid registered Will dated 8.5.2014 executed by Sh.Sewa Singh in his favour; though such facts could not be pleaded in the written statement when it was filed since defendant No.1 was not aware of the Will and was not in possession thereof; the Will has been traced recently from the papers of Sh.Sewa Singh, which were lying in the house, therefore, the Will is necessary to be pleaded in this case. Defendant No.1 sought consequent amendment in the written statement filed by him earlier.

4. The application was resisted by the plaintiffs. Vide the impugned order dated 29.8.2022, the application was dismissed by the trial Court of Additional Civil Judge (Sr.Divn.), Ambala, leaving defendant No.1 aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents and respondents No.1 and 2 have put in appearance through counsel.

5. I have heard learned counsel for the parties besides going through the record and I find that the impugned order is not sustainable rather it is liable to be set aside.

6. Order 6 Rule 17 CPC deals with amendment of the pleadings. It provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. This provision has two parts. In the first part, a party is allowed to amend the pleadings as is found to be just by the Court concerned. In that case, the Court has got discretion to allow or disallow the amendment. Of Course the discretion is to be exercised in a judicious manner. Whereas, the other part clarifies that if the amendment is necessary for the purpose of determining the real question of controversy between the parties, the same shall be allowed. In that eventuality, the Court has left with very less discretion. As per proviso, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party

could not have raised the matter before the commencement of trial. This proviso somewhat restricts the scope for allowing application for amendment. The purpose was to discourage the parties from seeking frequent amendments, which result in prolonging the proceedings unnecessarily.

7. However, this proviso does not come in the way of allowing the application in the present case because Sh.Sewa Singh – defendant No.2 had expired during the pendency of the suit on 6.1.2016. The dispute between the parties, who are close relatives of the deceased Sewa Singh is with regard to the property, which stood in the name of Sewa Singh regarding which he had suffered a decree in favour of Ishar Kaur on the basis of settlement. As per the case of defendant No.1/applicant, after death of Sewa Singh when he searched his papers, he came across the Will in question and thereafter he had moved an application for amendment of the written statement. Therefore, the petitioner/defendant No.1 cannot be blamed for not seeking the amendment by filing the application earlier. There does not come out to be lack of any due diligence on his part in moving the application earlier.

8. Furthermore, under Section 151 CPC, the Court has inherent power to allow the application for meeting the ends of justice. The amendment is required to be allowed to prevent the multiplicity of the proceedings, otherwise defendant No.1 shall have to file a separate suit on the basis of Will executed by Sewa Singh in his favour and rather such situation can be avoided, if he is allowed to take plea in that regard in the present suit. Defendant No.1 needs to be given an opportunity to plead the

Will and then after framing issue in that regard by the trial Court permitted to lead evidence in that regard. The plaintiffs can lead evidence in rebuttal that would finally decide the rights of the parties in the suit property, which was earlier in the name of Sewa Singh deceased.

9. The trial Court has dismissed the application mainly for the reason of delay in filing the same but as has been discussed above, the delay if any on the part of applicant/defendant No.1 is not intentional, rather it has been explained satisfactorily. The trial Court has been unable to understand the factual position in proper manner and to apply the law in an appropriate way.

10. Therefore, the present revision petition is allowed. The impugned order is set aside, consequently the application for amendment of written statement is allowed, subject to payment of Rs.5,000/- as cost. After ensuring that the cost is got paid from the applicant/defendant No.1 to the plaintiffs, the trial Court would take the amended written statement on record and thereafter proceed further in the matter in accordance with law.

Since the main revision petition has been allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

26.5.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No