

CR-5131 of 2023

2023:PHHC:117093

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

CR-5131 of 2023

Date of decision: 05.09.2023

Manvinder Singh and another

.....Petitioners

Versus

Harpreet Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Atul Jain, Advocate,
for the petitioners.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred under Article 227 of the Constitution of India read with Section 151 CPC challenging the order dated 11.08.2023 (Annexure P-6) passed by the Court of learned Civil Judge (Junior Division), Patiala, whereby application filed by the defendant-petitioners under Order 6 Rule 17 CPC for amendment of written statement has been dismissed.

2. Brief facts, leading to the filing of the present revision petition are that plaintiff-respondents filed a suit for declaration to the effect that plaintiff No.1 is the owner and in joint possession of 1/3 share in House No.1218, Mohalla Purbian, near Sirhindi Gate, Patiala, and for separate possession by way of partition by meets and bounds of 1/3 share of plaintiff No.1 in House No.121/8 situated at Mohalla Purbian, near Sirhindi Gate, Patiala, consisting of ground floor, 1st

floor, 2nd floor and 3rd floor as per site plan attached with the plaint and for permanent injunction restraining the defendants, their servants, agents, attorneys from alienating more than their share i.e. 1/3rd share each in the suit property by way of sale, gift, mortgage, exchange or disposing of in any manner to any person till the decision of the suit. Upon notice, defendant-petitioners appeared and filed their written statement. Plaintiff-respondents filed replication to the written statement. Thereafter, defendant-petitioners filed an application under Order 6 Rule 17 CPC for amendment of written statement. The said application has been dismissed by the trial Court vide impugned order dated 11.08.2023.

3. Learned counsel for the petitioners contended that the impugned order is patently illegal, perverse and suffers from various infirmities. He further contended that petitioner had disclosed all the facts to their previous counsel, however, on change of counsel they came to know that all the facts were not pleaded in the written statement. He further contended that the amendment sought is material and necessary for determining the real controversy between the parties. He further contended that if the proposed amendment is allowed, no prejudice will be caused to the plaintiff-respondents, however, if the impugned order is not set aside, defendant-petitioners will suffer irreparable loss.

4. I have heard learned counsel for the petitioners and perused the record.

5. Perusal of the record shows that pleas with regard to agreement dated 20.04.2001 allegedly executed by the plaintiff and relinquishment of the right by the plaintiff in the suit property regarding his having given $\frac{3}{4}$ share in certain land in village Mehmadpur Jattan, find mention in the written statement filed by the petitioner. So far as plea with regard to execution of registered 'will' dated 05.03.1997 by Gian Singh in favour of his wife Harnam Kaur with regard to one shop in the suit house is concerned, plaintiff has specifically pleaded in the plaint that Gian Singh had died intestate on 18.10.1999 and petitioner-defendants in para 2 of the written statement have submitted that the same is correct to the extent that Gian Singh died on 18.10.1999, however, they have not specifically denied the fact that Gian Singh had died intestate. Moreover, the 'will' allegedly executed by Gian Singh is dated 05.03.1997 and it is difficult to believe that the same was not in their knowledge even after so many years of death of Gian Singh. In this way, by way of proposed amendment petitioners want to withdraw the plea taken by them in their written statement, which cannot be allowed under the law.

6. Further, amendment in pleadings is envisaged/permitted under Order 6 Rule 17 of the Civil Procedure Code (for short 'CPC'), which is reproduced hereinbelow, and stipulates 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:

Provided that 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.”

7. From a reading of the above provision, it is clear that as per proviso to Order 6 Rule 17 CPC, 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 the trial. However, in the present case, neither in the application seeking amendment, nor in the impugned order there is any averment by the applicant/defendants to the effect that in spite of 'due diligence' the pleas sought to be incorporated could not be raised by petitioners before the commencement of trial.

8. In view of the above, this Court does not find any illegality or perversity in the impugned order, which may call for any interference by this Court by exercising its revisional jurisdiction.

9. Dismissed.

05.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No