

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

CR-6444-2019 (O&M)

Date of decision: 27.02.2023

Tarsem Singh and another

...Petitioners

Versus

Inderjit Kaur

...Respondent

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

Present: Mr. S.P. Soi, Advocate with
Mr. Sahil Soi, Advocate for the petitioners.

Mr. Ashok Giri, Advocate for the respondent.

H.S. MADAAN, J.

Being impugned in this revision petition is the order dated 30.07.2019, vide which the trial Court had allowed an application for amendment of plaint filed by the plaintiff.

Briefly stated facts of the case are that plaintiff Smt. Inderjit Kaur had brought a suit against defendants Tarsem Singh and Jaswinder Kaur seeking a declaration that she is owner in possession of land measuring 5K-5M being 1/6th share of land measuring 31K-12M situated in the area of village Malri, Tehsil Nakodar, District Jalandhar and 1/6th share in the house and haveli situated in abadi of village Malri with consequential relief of permanent injunction restraining the defendants from alienating the suit property more than their share or from interfering in the peaceful possession and enjoyment of plaintiff over the suit

property. In addition, the plaintiff had sought joint possession of the property mentioned in headnote 'A'.

As per case of the plaintiff, she was married with Kulwinder Singh son of Lachhman Singh on 21.07.2004, however, the couple was not blessed with any child. Kulwinder Singh was having two children from his earlier marriage who are defendants in the case. Sh. Kulwinder Singh had died on 03.12.2014, leaving behind the plaintiff and defendants as his legal heirs. After death of Kulwinder Singh, defendant No.1 alleged that Kulwinder Singh had executed a Will dated 25.06.2004 in his favour, therefore, the plaintiff had filed the suit. However, while drafting of the plaint due to oversight and mistake, description of the property left by Kulwinder Singh was not mentioned in part 'A' of the headnote of the plaint and share of the plaintiff has been wrongly mentioned as 1/6th instead of 1/3. In para 'A' of the headnote of the plaint, the plaintiff has mentioned house and haveli but inadvertently location of only one property was given. The plaintiff sought consequent amendment in the plaint.

That application was contested by the defendants on factual as well as legal grounds. Vide order dated 30.07.2019, that application was accepted. The operative part of the order runs as follows:-

“Perusal of the file shows that the applicant has filed the present suit for declaration and permanent injunction as detailed in the head note of the plaint against the defendant. The perusal of the head note shows that in the head note of the original plaint, the applicant has claimed declaration to the effect that she is owner in possession of the land measuring 5 kanals 5 marlas being 1/6 share of land 31 kanals 12 marlas of the property

detailed in the head note of the plaint. Further, in para No. 4 of the original plaint, the applicant has specifically pleaded that Kulwinder Singh was owner of the property measuring 31 kanals 12 marlas and out of that property, he transferred half share in the name of his son Tarsem Singh i.e. respondent No. 1. Now, coming to the application in hand the simple reading of the application clearly shows that the applicant has prayed for amendment to the effect of claiming declaration to the effect that she is owner in possession of the land to the extent of 1/3rd share out of the property measuring 15 kanals 16 marlas. It is clearly shown that in the original plaint she is claiming 1/6th share out of 31 kanal 12 marlas in the present application, along with other reliefs, she is claiming 1/3 share out of 15 kanal 16 marlas. As such, there does not appear any malafide intention on the part of the applicant. It does not appear that she is concealing anything from the Court qua the sale of half of the share by the husband of plaintiff in favour of defendant No. 1. The remaining amendments sought by the applicant by way of present application also appears to be bonafide and errors/ommissions appears to be merely result of clerical error. As such, this Court does not find any unjustification in allowing the present application in order to read to a logical end of the case in hand. Accordingly, the application in hand is allowed. Now, the case is adjourned to 19.08.2019 for filing the amended plaint.”

It is this order which is being challenged in the present revision petition. Notice of the revision petition filed by defendants was given to the plaintiff who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The order under revision is quite detailed and well reasoned.

It does not suffer from any illegality or infirmity. The trial Court has

observed that there does not appear to be any mala fide on the part of plaintiff-applicant or that she is concealing anything from the Court qua the sale of half of share by husband of the plaintiff in favour of defendant No.1. Amendment sought has been found to be bona fide as an error/omission result of clerical nature.

The plea raised by counsel for the petitioner that amendment is time barred and nature of the suit has got changed which is not permissible, does not appear to have any element of merit.

Learned counsel for the petitioners has referred to judgment Asain Hotels (North) Ltd. Vs. Alok Kumar Lodha & Ors., 2022 LiveLaw (SC)585. The same is not applicable due to different facts and circumstances and the context in which such observations had been made. It is stated by counsel for the respondent/plaintiff that parties have already adduced their evidence and now the case is listed for 14.03.2023 for final arguments.

Under the circumstances, I do not find any merit in the civil revision petition. The same stands dismissed accordingly.

27.02.2023

sumit.k

(H.S. MADAAN)
JUDGE

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