

2024:PHHC:004570
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

124

CR-162-2024 (O&M)
Date of decision:12.01.2024

Charanjit Kaur & others

... Petitioners

Vs.

Manmohan Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. A.P. Kaushal, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by plaintiff/petitioner against the order dated dated 06.12.2023 passed by the Civil Judge, Jr. Division, Ludhiana, whereby application filed by the plaintiffs under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

2. Plaintiffs filed suit for declaration to the effect that the sale deed pertaining to House No.15-D, situated at Sector-30-B, Chandigarh allegedly executed by defendants No.2 and 3 Nirmla Kaur and Paramjit Kaur in favour of defendant No.6 - Surinder Kaur is illegal, null and void and is liable to be cancelled being a result of fraud, misrepresentation, without any authority and plaintiffs along with defendant No.5 are having 1/5th share in the same and for possession of 1/5th share out of the said property. Declaration was also sought that the plaintiffs are exclusive owner of a House bearing No.1066/7-A as detailed in the head of the plaint, House bearing Plot No. 14-A, House No.4160/B as detailed in the head note of the plaint and also for declaration to the effect that late Nazar Singh expired intestate and the

alleged Will dated 18.12.2000 is illegal, null and void and is a result of fraud and impersonation and for partition of 1/5th share of plaintiffs and defendants No.5 in House No.15-D, Sector 30-B Chandigarh and also for permanent injunction for restraining defendant No.6 from alienating, creating charge, handing over possession, leasing out or transferring H. No.15-D, Sector 30-B, Chandigarh and for restraining defendants No.1 to 4 from dispossessing the plaintiffs illegally and forcibly or interfering in their exclusive possession in property bearing H. No.1066/7A, Ludhiana and Plot No.14A, H. No.4160/B, Ludhiana.

3. During the pendency of the suit, the plaintiffs filed an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment in the plaint which was dismissed by the trial Court vide the impugned order. Hence, the present revision petition has been filed by the petitioners/plaintiffs before this Court.

4. Learned counsel for the petitioners while relying upon the decision of the Apex Court in **Abdul Rehman & another Vs. Mohd. Ruldu & others, 2012(4) RCR (Civil) 481** has contended that all amendments which are necessary for purpose of determining the real question and controversy between the parties should be allowed to minimize the litigation and in the interest of justice, the amendment can be sought at any stage of the proceedings. He has further contended that the trial Court has not considered that civil suit is at the initial stage and the trial is yet to commence and the proposed amendment will not change the nature of the suit in any manner, rather the same will reduce multiplicity of the litigation. He has urged that the respondents/defendants are not likely to be prejudiced

by the proposed amendment. He has submitted that when plaintiffs searched the old articles of Gurmail Kaur then they found original Will wasika No.110 dated 21.07.2009 executed by Gurmail Kaur in favour of Nirmal Singh and after perusing the same, the application for amendment has been filed for adding the relevant and material facts with regard to registered Will of Gurmail Kaur. He has further submitted that after death of Gurmail Kaur, Nirmal Singh became exclusive owner of the property on the basis of said Will and after death of Nirmal Singh, plaintiffs and defendant No.5 have become owners of the suit property on the basis of natural succession.

5. Perusal of the record reveals that earlier also, the plaintiffs filed an application under Order 6 Rule 17 CPC for amendment of the plaint which was allowed vide order dated 31.08.2017. Then after framing of the issues, case was fixed for plaintiffs' evidence. When the evidence of the plaintiffs was going on and case was fixed for cross-examination of the witnesses of the plaintiffs, then the present application for amendment was filed. By way of proposed amendment, plaintiffs want to bring on record that Gurmail Kaur executed Will No.110 dated 21.07.2009 in favour of Nirmal Singh. Gurmail Kaur widow of Nazar Singh was defendant No.4 in the suit. It has been specifically observed by the trial Court that till date neither any intimation regarding her death was given nor any application for impleading her L.Rs. was filed. No death certificate of Gurmail Kaur has been placed on record. However, as per death certificate of Nirmal Singh he expired on 24.04.2010. Meaning thereby, even if the Will wasika No.110 dated 21.07.2009 was executed by Gurmail Kaur in favour of Nirmal Singh, he had died on 24.04.2010 prior to the death of executant Gurmail Kaur. So

when the testamentary beneficiary died prior to the death of executor of the Will, then obviously no right was created. As no right was created due to prior death of Nirmal Singh then the plaintiffs cannot claim their right on the basis of such Will. As such proposed amendment is not material and not necessary for adjudication in the present case to decide the controversy between the parties. Otherwise also the trial has already commenced and the evidence of the plaintiffs is going on.

6. The impugned order passed by the trial Court is a well reasoned order and does not suffer from any illegality or perversity. Therefore, considering the facts and circumstances of the case, no reason for interference is called for in the impugned order by way of exercising the revisional jurisdiction.

7. Dismissed.

(SUKHVINDER KAUR)
JUDGE

12.01.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |