



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

124**CR-1905-2024 (O&M)****Date of Decision : 08.07.2024****BALDEV RAJ KAKKAR**

.... Petitioner

VERSUS**GHAN SHYAM KAKKAR & ORS.**

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deepam Ragav, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The present petition has been filed challenging the order dated 19.04.2023 passed by the learned Civil Judge (Junior Division), Gurugram vide which the application filed by plaintiff-respondent No.1 for amendment of the plaint was allowed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for partition and separate possession of the suit property in terms of the decree of partition and for permanent injunction. Written statement was filed by the defendant-petitioner wherein a registered Will dated 08.11.2006 was setup and on the basis of the said Will it was claimed that the defendant-petitioner had become the sole owner of the suit property. Before the issues could be framed, an application was filed under Order VI Rule 17 CPC seeking permission to amend the plaint. By way of the amendment the plaintiff-respondent No.1 sought to challenge the Will set up by the defendant-petitioner dated 08.11.2006 and registered on 30.10.2019. The said application was contested. The Trial Court vide the

impugned order dated 19.04.2023 allowed the amendment application. Hence, the present revision petition.

3. Learned counsel for the defendant-petitioner would contend that by way of the present amendment the entire structure of the suit has been changed and that the plaintiff-respondent No.1 by way of an amendment cannot change the structure of the suit. In support of his arguments, learned counsel for the defendant-petitioner has relied upon the judgment dated 29.02.2024 passed by the Hon'ble Supreme Court in the case of **Basavaraj Vs. Indira & Ors. [(2024) 3 SCC 705]** to contend that the amendment which changes the nature of the suit cannot be permitted.

4. Heard.

5. In the present case initially the plaintiff-respondent No.1 filed a suit wherein a prayer was made for passing of a decree of partition and separate possession of the suit property. It was averred in the plaint that the parties were real brothers and sisters and sons and daughters of late Jagan Nath Kakkar and Late Smt. Parkash Devi. It was the case set up that Jagan Nath Kakkar had expired intestate on 21.04.2007 leaving behind his immovable property bearing House No.445, Sector-7, Urban Estate, Gurugram, Haryana. On that basis the partition suit was filed. In the written statement the stand taken by the defendant-petitioner was that Jagan Nath Kakkar had executed a Will dated 08.11.2006 bequeathing House No.445, Sector-7, Urban Estate, Gurugram in his favour. It was further stated that though the Will was executed on 08.11.2006, however, the same was registered on 30.10.2019. Immediately after filing of the written statement,

an application was filed for amendment of the plaint on the ground that it was only from the written statement that the plaintiff-respondent No.1 learnt about the forged and fabricated Will dated 08.11.2006 and hence the necessity to file the application for amendment. The Trial Court vide the impugned order allowed the amendment. The argument of the learned counsel for the defendant-petitioner that the entire structure of the suit would be changed deserves to be rejected. In the present case the plaintiff-respondent No.1 had come to Court for passing of a decree regarding partition of House No.445, Sector-7, Urban Estate, Gurugram on the ground that the father of the parties had died intestate. However, in the written statement the stand taken by the defendant-petitioner was that the suit property had been bequeathed to the defendant-petitioner by his father vide Will dated 08.11.2006. Once the Will was propounded by the defendant-petitioner in his written statement, which came to the notice of the plaintiff-respondent No.1 for the first time after the filing of the written statement, the application was rightly filed for amendment of the plaint. The suit is still at the initial stage inasmuch as the issues are yet to be framed. Infact, a perusal of the impugned order reveals that the written statement was filed on 13.12.2021 and on the next date of hearing i.e. 11.02.2022 the application for amendment of the plaint was filed. The judgment relied upon by the learned counsel for the defendant-petitioner would be of no assistance to him inasmuch as in the said case the amendment was sought on the ground that due to oversight and mistake certain facts could not be pleaded. In the

present case it is the defendant-petitioner herein who has propounded a Will and that too qua the same property for which the partition has been sought.

6. In view of the above, no fault can be found with the impugned order. The revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.07.2024

Aman Jain

(ALKA SARIN)

1 JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*