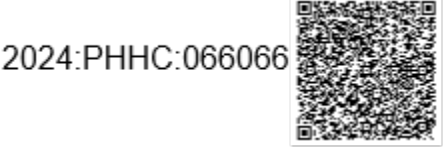


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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CR-2738-2024 (O&M)
Reserved on : 06.05.2024
Pronounced on : 13.05.2024

MANDEEP KAUR AND ANOTHERPetitioners

VERSUS

GURMIT KAUR AND OTHERSRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Shekhar Kumar, Advocate for the petitioners.

ALKA SARIN, J.

1. Challenge in the present revision petition is to the order dated 02.04.2024 passed by the learned Civil Judge (Senior Division), Fatehgarh Sahib whereby the application filed by the plaintiff-petitioners under Order VI Rule 17 CPC for amendment of the plaint was dismissed.
2. The brief facts relevant to the present case are that the plaintiff-petitioners filed a suit under Sections 34 and 35 of the Specific Relief Act for a declaration to the effect that the suit property, as fully described in the plaint by letters 'A' to 'F', was ancestral and co-parcenary and joint family property of the plaintiff-petitioners and the defendant-respondents. They also filed a suit challenging the judgment and decree dated 24.11.1993 passed in Civil Suit 751 dated 14.09.1993 as being illegal, null and void and further for permanent injunction. A written statement was filed by the defendant-respondents wherein it was specifically stated that the suit property situated in Village Mandlan as mentioned at letter 'E' in the heading of the plaint

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came to the hands of the defendant-respondents through Dalbara Singh son of Arjan Singh by way of a decree of the Civil Court passed in the year 1990 and the remaining property was received by the defendant-respondents through transfer deeds. Thereafter, the issues were framed and the evidence was led by the parties. Subsequently, an application was filed by the plaintiff-petitioners for amendment of the plaint averring in the application that inadvertently the relief of setting aside the judgment and decree dated 19.11.1990 suffered by Dalbara Singh in favour of defendant-respondents could not be sought qua property 'F' and now the plaintiff-petitioners want to challenge the said judgment and decree and add property 'F' to the present suit. It has been averred in the application that despite due diligence the plaintiff-petitioners could not challenge the said judgment and decree and that the said fact came to the notice of the plaintiff-petitioners only when certified copies of the judgment and decree dated 19.11.1990 were tendered in evidence by the defendant-respondents. A reply was filed to the said application. Vide impugned order the said application was dismissed.

3. Learned counsel for the plaintiff-petitioners would contend that the plaintiff-petitioners could not bring on record the said pleading despite due diligence and that it was only when the evidence was led by the defendant-respondents and the certified copies of the judgment and decree dated 19.11.1990 were produced that the said fact came to the notice of the plaintiff-petitioners and thereupon an application for amendment of the plaint was filed.

4. Heard.

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5. In the present case the factum of the decree passed in the year 1990 was specifically pleaded in the written statement. When the matter was at the fag end and fixed for rebuttal evidence, the application for amendment of the plaint was filed by the plaintiff-petitioners. Though learned counsel for the plaintiff-petitioners has stated that he would not lead any further evidence, however, once the said judgment and decree is permitted to be challenged at this stage, the same would amount to a *de novo* trial. The application itself is bereft as to why the challenge was not laid to the said judgment and decree when the same specifically stood referred to in the written statement. Further still, learned counsel for the plaintiff-petitioners has not been able to convince this Court that the said judgment and decree were not reflected in the revenue record and hence it was not within their knowledge. The suit was filed on the basis of the revenue record pertaining to the ownership of the defendant-respondents and their parents over the suit property. No other argument has been raised.

6. In view of the above, I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO