



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

1. CR-6635-2023 (O&M)
- Sunita Yadav
- ... Petitioner
- Versus
- Hasti Devi and Others
- ... Respondents
2. CR-6647-2023 (O&M)
- Sunita Yadav
- ... Petitioner
- Versus
- Hasti Devi and Others
- ... Respondents

Date of Decision:-**31.07.2024**

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Argued by :-

Mr. Uday Vij, Advocate
for the petitioner.

Mr. Adarsh Priyadarshi, Advocate with
Ms. Poonam Singh Thakur, Advocate
for respondents No.2 and 3, as also LR's of respondent No.1.

Service of respondents No.4 and 5
dispensed with vide order dated 07.02.2024.

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**RITU TAGORE, J.**

1. This order shall dispose of the above captioned revisions filed under Article 227 of the Constitution of India, arising from the order dated 26.09.2023 (Annexure P-1), passed by learned Civil Judge (Senior Division), Gurugram, which allowed the amendment to the plaint, in the civil suit bearing No.CS/750/2016 titled Mr. Ganpat Singh Yadav and Another vs. Mrs. Hasti Devi and Others.

2. Learned counsel submits that learned trial court erred in allowing the application for amendment of the plaint that resulted in changing the cause of action and nature of the suit. It is stated that in the original plaint (Annexure P-2), the respondents No. 2 and 3/plaintiffs, did not contest the Will dated 28.03.2011 executed by their father in favour of his wife (since deceased). Although, it was claimed that their mother had acquired only a life interest and was not the absolute owner of the bequeathed properties. Based on these averments, they instituted the suit seeking a declaration of ownership of the suit property as the legal heirs of their deceased father, and further sought an injunction to restrain the petitioner and respondents No.4 and 5/defendants from alienating the suit property.

3. Learned counsel submits that the respondents No.2 and 3/plaintiffs through an amendment, seek to alter the nature of suit property and cause of action, which is not permissible under law. It is stated that during their mother's life time, the suit itself was not maintainable, as their mother was absolute owner of the property under the Will. It is further urged that an



application move by Respondents No.2 and 3/plaintiff under Order 6 Rule 17 CPC read with Section 151 CPC and Order 1 Rule 10 CPC was returned to them by the Court following the objections raised by the petitioner. The subsequent application for amendment during the pendency of earlier amendment application was not maintainable under Order 2 Rule 2 CPC.

4. The learned counsel submits that the learned trial Court erred in failing to note that proposed amendment is clearly time- barred, as Respondent No 2 and 3/plaintiff had knowledge of the Will executed by their mother, and proposed amendment was filed belatedly, when the case was fixed for petitioner's evidence and trial had commenced. It is stated that learned trial Court failed to properly consider the pleading and applicable law. A prayer is made to set aside the order dated 26.09.2023 (Annexure P-1). He placed reliance on **Vijay Bhawar and Others vs. Ajaib Singh (deceased) through his LR, 2015(3) R.C.R. (Civil) 604** and **Basavaraj vs. Indira and Others, 2024(3) SCC 705**, to support his contentions.

5. Contrarily, learned counsel for the respondents No.2and3, defended the order, stating that it is in consonance with the principles culled out from numerous decisions that provide for allowing all those amendments which help to solve the rights of the parties effectively and completely. The learned counsel submits that all the objections taken by the petitioner to oppose the amendment are to be tested on merits of the case. Learned counsel submits that mother of the parties died during the pendency of the suit. Upon gaining knowledge of their mother's will through the written statement of the petitioner, they moved an application to amend the plaint,



seeking to incorporate the grounds to challenge the Will. They also moved another amendment application to incorporate the plea of partition as well. Learned counsel argues that the objective behind the provisions for amending pleadings is to enable the litigants to present all the claims in a single suit for an effective resolution of the case. It is stated that order is valid in the eyes of law and prays dismiss the petition for lacking merits. In support of his contention, placed reliance on **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another, 2022 SCC OnLine SC 1128.**

6. I have heard the learned counsel for the parties and have gone through the record with their valuable assistance.

7. Admittedly, the parties, who are siblings, are in litigation over the properties left by their parents. The Wills executed by father and mother (Ex. P3 and Ex. P4) are in dispute. Both parties have filed their respective pleadings, raising their respective claims and asseveration against each other. From the perusal of the impugned order, it is evident, that the suit was at the stage of plaintiff's evidence, when amendment was sought. The learned Trial Court, after considering the provisions of Order 6 Rule 17 CPC, and the relevant pleadings of the parties, found the amendment necessary for the complete and effective decisions of the rival claims of the parties, with respect to the suit properties. Hon'ble the Supreme Court in **Life Insurance Corporation of India's case (*supra*)** has culled out few principles, in the matter of seeking amendment of the pleadings. It has been categorically observed that "*all amendments are to be allowed which are necessary for*



determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC. The prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties, and to avoid multiplicity of proceedings, provided the amendment does not result in injustice to the other side, by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations). In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision. Where the amendment is sought before commencement of trial,



the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed”.

8. Upon applying the above guidelines to the facts of present case, and considering the amendment sought to be made in the light of the existing pleadings of the parties, it appears that these amendments do not change the nature of the suit. The respondents No.2 and 3/ plaintiffs are claiming their ownership right in the suit land based on inheritance from their father's estate and limited right of inheritance to their mother (since deceased), while the petitioner/defendant denies these claims, asserting her right in the suit land based on a Will executed in her favour by her late mother, an absolute owner of the suit land. In given facts, the issues of the suit's maintainability, lack of cause of action in favor of the respondents No.2 and 3/ plaintiff, and the suit being time barred, must all to be tested and evaluated on the merits of the case upon appraisal of the evidence. The second application for amendment, which seeks to incorporate the relief of partition, cannot be taken as barred under Order 2 Rule 2 CPC given the facts. The Courts should permit all the pleas to be recorded to ensure a final



and complete adjudication of the *lis* between the parties, thereby preventing further litigant.

9. In view of the above discussion, this Court finds no illegality in the impugned order, warranting any interference by this Court. Accordingly, present revision petitions are here dismissed.

10. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.

11. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

31.07.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No