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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-468-2025(O&M)

Date of decision:-24.01.2025

Jagdish

...Petitioner

Versus

Sher Singh (now deceased) through his LR's and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. Johan Kumar, Advocate
for the petitioner.

SUVIR SEHGAL, J.(ORAL)

CM-1351-CII-2025

1. For the reasons given in the application, it is allowed.
2. Legal heirs of deceased – respondent No.1 are ordered to be brought on record.

MAIN CASE

3. By way of the present revision petition, petitioner - plaintiff has assailed order dated 19.11.2024, Annexure P9, passed by learned Additional Civil Judge (Sr.Divn.), Gohana, District Sonapat, whereby an application, Annexure P7, filed under Order 6 Rule 17 CPC for the amendment of the plaint has been declined.
4. Counsel submits that the petitioner filed a suit for declaration with consequential relief of possession and permanent



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injunction claiming share in coparcenary property and upon notice, respondents filed replies contesting the suit. They took up a plea that Sarup Singh, grandfather of the petitioner had executed a Will dated 25.09.1970 and also transferred some share of the total suit property by way of a judgment and decree dated 25.02.1972 in favour of some of the respondents. Asserting that as the petitioner was not aware of these facts, an application, Annexure P7, was filed for the amendment of the plaint to challenge both the Will and the earlier judgment and decree, which has been erroneously declined by the Trial Court. It is his argument that the amendments, which are self explanatory and would not result in the changing the nature of the suit, deserve to be incorporated. He has placed reliance upon the judgment of the Hon'ble Supreme Court in **Dinesh Goyal @ Pappu Versus Suman Agarwal (Bindal) & Ors., 2024 SCC Online 2615** and **Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Anr., 2022 SCC Online 1128.**

5. I have heard counsel for the petitioner and considered his submissions.

6. The suit, Annexure P1, filed by the petitioner is being contested by the respondents, who filed separate written statements, which are appended at Annexures P2 to P6, with the petition. In their written statements, they have taken a common stand that Sarup Singh had executed a Will on 25.09.1970 bequeathing the property to his four sons in equal share and 1/4th share devolved upon Sher Singh, petitioner's father. Property was mutated in favour of all the four



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descendants in terms of the Will. Respondent No.1, who is the father of the petitioner, in his separate written statement had inter alia averred that he had disposed off the property, which fell to his share with the prior consultation of the petitioner to meet the expenses of the education and other expenses of the petitioner as well as his siblings. It was averred that the petitioner had completed B.Tech Civil from Gulbarga University in the year 1993 and all the educational expenses were borne by respondent No.1. In the year 1994. Suman, sister of the petitioner, who completed B.Ed. was married out of the sale proceeds of the land. Petitioner's mother is pleaded to be a cancer patient, who is undergoing treatment from Rajiv Gandhi Cancer Institute, Rohini and all the expenses are being met by respondent No.1 without getting any financial assistance from the petitioner, who is residing separately with his wife in Gurugram. In order to meet the financial exigencies, the inherited property was disposed off by way of sale and a relinquishing deed, which is valid.

7. Even though the written statement had been filed by the respondents in the year 2017/2018, petitioner did not take any step to amend the plaint and an application for amendment is moved in August, 2024. A perusal of the application, Annexure P7, shows that the petitioner claims that upon coming to know of these events from the written statement, he made inquiries from the revenue authorities, but this assertion is not supported by any document. No explanation, whatsoever, has been given for the delay of seven years in moving an application for alteration of the plaint. Not only this, by virtue of the



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amendment, the petitioner is seeking to challenge the Will as well as the mutation and subsequent revenue entries, which will displace the case set up by the petitioner in the plaint and would completely change the nature of the suit, which is impermissible. There is no due diligence on the part of the petitioner. Furthermore, in the garb of this amendment, petitioner cannot be permitted to challenge a Will and a judgment and decree, which was passed more than five decades earlier. In ***Dinesh Goyal's*** case (supra), the Hon'ble Supreme Court has observed that though amendments should generally be allowed, but if the amendment raises a time barred claim resulting in divesting the other side of a valuable accrued right, amendment should be disallowed. This Court is of the view that as the petitioner is trying to raise a claim, which has become stale and is hopelessly barred by time, the application, Annexure P7, has been rightly rejected. There is no error in the impugned order nor does it call for any interference.

8. Finding no merit in the petition, which is devoid of merit, it is dismissed with no order as to costs.

24.01.2025
Brij

(SUVIR SEHGAL)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No