

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-6547-2018 (O&M)****Date of Decision : 19.11.2025**

Gurmeet Kaur

... Petitioner

Versus

Karnail Singh

... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Narinder Kumar Vadehra, Advocate for the petitioner.

Mr. Dheeraj Mahajan, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 17.08.2018 whereby the application filed by the plaintiff-petitioner herein for amendment of the plaint before the First Appellate Court has been dismissed.

2. Briefly stated the facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for declaration to the effect that she is owner of a double-storey house marked as ABCD on ground floor and EFGH on the first floor as shown in the site plan and fully described in the plaint as also for mandatory injunction directing the defendant-respondent herein to vacate the house and hand over peaceful possession of the same. It was averred in the plaint that Kartar Singh, who was the father of plaintiff-petitioner, was owner of the house and three shops mentioned in the headnote of the plaint. It was further the case set up that the plaintiff-petitioner was

daughter of Kartar Singh and after the death of Kartar Singh mutation regarding the property was to be sanctioned in favour of the plaintiff-petitioner. It was the case set up that the mother of the plaintiff-petitioner was earlier married with Madho Singh son of Veer Singh and after the death of Madho Singh the mother of the plaintiff-petitioner solemnized marriage with Kartar Singh son of Labh Singh. The defendant-respondent is the son of Madho Singh. It was further the case set up that the defendant-respondent was living with plaintiff-petitioner and Kartar Singh, who had blind faith in him. It was further averred in the plaint that the defendant-respondent got the signatures of Kartar Singh on blank papers by force and that he forged an agreement and turned Kartar Singh out of the house. On the basis of the forged agreement, a suit for specific performance was filed by the defendant-respondent. It was further averred that the defendant-respondent has no right, title or interest in the suit property and it is the plaintiff-petitioner who is the only daughter of Kartar Singh. The suit was contested by the defendant-respondent by filing his written statement.

3. Vide judgment and decree dated 03.10.2016 the suit was dismissed. Aggrieved by the same, an appeal was preferred by the plaintiff-petitioner herein. After the appeal had been pending for some time, an application was filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint for incorporating the plea that the plaintiff-petitioner was entitled to the suit property firstly being the only legal heir of Kartar Singh and secondly, on the basis of a registered Will dated 25.09.2006. It was averred in the application that the counsel had not conducted the case properly and had failed to plead the execution of the registered Will dated 25.09.2006 by Kartar Singh in favour of plaintiff-petitioner. Vide the impugned dated 17.08.2018 the application has been dismissed holding that

the Will was well within the knowledge of the plaintiff-petitioner from the very beginning and even a photocopy of the same was produced by her. Hence, the present revision petition.

4. Learned counsel for the plaintiff-petitioner would contend that the amendment is necessary as the counsel for the plaintiff-petitioner did not plead the registered Will in favour of the plaintiff-petitioner, which was handed over to him. It is further the contention that on the basis of the registered Will the plaintiff-petitioner has inherited the property of her father. He has relied upon judgments of the Hon'ble Supreme Court in the cases of **Prithi Pal Singh & Anr. vs. Amrik Singh & Ors. [2014 (1) RCR (Civil) 327]**, **Mahila Ramkali Devi & Ors. vs. Nandram (D) Thr. LRs. & Ors. [2015 (5) RCR (Civil) 562]**, **Abdul Rehman & Anr. vs. Mohd. Ruldu & Ors. [2012 (4) RCR (Civil) 481]** and **Varun Pahwa vs. Mrs. Renu Chaudhary [2019 (2) RCR (Civil) 383]** and those of this Court in the cases of **Harbheg Singh & Anr. vs. Darshan Ram & Ors. [2006 (9) RCR (Civil) 245]** and **Anant Ram vs. Hans Raj & Ors. [2012 (5) RCR (Civil) 609]**.

5. *Per contra* learned counsel for the defendant-respondent has contended that it is not a case where the plaintiff-petitioner was not aware of the Will inasmuch as a photocopy of the Will was produced before the Trial Court, however, there were no pleading with regard to the Will and at no stage from the time of filing of the suit i.e. from January 2014 to 03.10.2016, the plaintiff-petitioner made any efforts to amend the pleadings or to bring the Will on the record. Learned counsel for the defendant-respondent has further contended that allowing the pleadings to be amended and for incorporation of the Will, at this stage, would amount to a *de novo* trial inasmuch as fresh issues would need to be framed and evidence would have to be led regarding the Will. Learned counsel for the defendant-respondent has relied upon the

judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** to contend that by way of an amendment not only the nature of the suit would change but the defendant-respondent would also lose a valid defence.

6 Heard.

7. In the present case, the argument of learned counsel for the plaintiff-petitioner is that the amendment ought to have been allowed as the Hon'ble Supreme Court has repeatedly held that the amendment can be permitted at the appellate stage also. There can possibly be no dispute with the proposition of law as laid down in the cases of **Prithi Pal Singh** (supra), **Mahila Ramkali Devi** (supra), **Abdul Rehman** (supra), **Varun Pahwa** (supra), **Harbheg Singh** (supra) and **Anant Ram** (supra). In the case of **Prithi Pal Singh** (supra), the issue involved was whether the amendment would relate back to filing of the suit. In the case of **Mahila Ramkali Devi** (supra), it was held that the amendments are to be allowed unless the Court is of the opinion that the party was not acting *bonafidely*. In the present case, as noticed above, the *bonafide* of the plaintiff-petitioner is questionable. The plaintiff-petitioner throughout was aware of the Will and had also produced photocopy of the same, however, neither was the issue of the Will pleaded nor any evidence was led qua the same. The story set up by the plaintiff-petitioner could have been believed if the plaintiff-petitioner had proved the Will in accordance with law and was now seeking an amendment in the pleadings by taking a plea that she was not aware that the Will had not been pleaded. However, in the present case she stepped into the witness-box and had not stated a word regarding the Will. Therefore, it cannot be said that she has acted in a *bonafide* manner. In the case of **Abdul Rehman** (supra), the

Hon'ble Supreme Court has held that if the necessary factual basis for amendment is already contained in the plaint the relief sought on the said basis would not change the nature of the suit and therefore the amendment was allowed. In the case of **Varun Pahwa** (supra), there was question of correction in the memo of parties hence the amendment was allowed. In the case of **Harbheg Singh** (supra), this Court has held that the amendment was necessary and was not likely to cause any irreparable injury to any party. In the case of **Anant Ram** (supra), it was held that the party cannot be made to suffer because of the fault of the counsel. None of the judgments relied upon by the counsel for the plaintiff-petitioner would therefore come to his aid as the same are distinguishable on facts.

8. Hon'ble Supreme Court in the case of **Sanjeev Builders Private Limited** (supra) has held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) 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.

(iii) The prayer for amendment is to be allowed

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*
- (ii) to avoid multiplicity of proceedings, provided*
 - (a) the amendment does not result in injustice to the other side,*
 - (b) 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*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or (iv) by the amendment, the other side loses a valid defence.*
- (v) 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.

(vi) 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.

(vii) 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.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) 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.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) 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. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”.

9. Hon’ble Supreme Court in the case of **Rajneesh Kumar & Anr. vs. Ved Parkash [2024 SCC OnLine SC 3380]**, while dealing with the issue of delay, has held as under :

“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the

court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

10. In the present case, the plaintiff-petitioner had filed the suit claiming to have inherited the suit property of Kartar Singh being the sole legal heir on the basis of natural succession. Having failed to prove her case before the Trial Court, the present application was filed before the First Appellate Court setting up a Will in her favour. The amendment now sought would not only result in the defendant-respondent losing a valid defence but would also result in injustice to the other side. The amendment now sought would also change the very nature of the suit inasmuch as earlier the suit was based on natural succession and now the plaintiff-petitioner is wanting to base her claim on the basis of a Will. As noticed above, a photocopy of the Will was produced and despite being in the knowledge of the Will, neither the Will was pleaded nor proved in accordance with law. The plaintiff-petitioner has put the entire blame on the counsel to state that the copy of the Will had been given to the counsel who did not plead the same. Learned counsel for the defendant-respondent, during the course of hearing, has handed over a copy of the affidavit filed in examination-in-chief by the plaintiff-petitioner wherein there is not a word regarding the alleged Will in her favour. Even in the grounds of appeal, copy whereof has been handed over by learned counsel for the defendant-respondent, which was filed before the First Appellate Court, there is no ground raised regarding any Will which was not pleaded by the counsel representing the plaintiff-petitioner before the Trial Court. It is only an afterthought to have introduced a Will after a period of one year of filing the appeal. Infact, a perusal of the judgment and decree dated

03.10.2016 reveals that photocopy of the Will (Mark 'A') was produced only in rebuttal evidence though even that could have been permitted as there was no issue the onus of which was cast upon the defendant-respondent.

11. The counsel for the plaintiff-petitioner has obviously not shown any due diligence and cannot now be permitted to file the amendment application in order to fill in the lacuna having been totally careless in pleading the Will at the appropriate stage. It would have been a different scenario if the Will itself was not within the knowledge of the plaintiff-petitioner and she came to know about the same at a subsequent stage. However, as observed earlier, Mark 'A' was produced by the counsel for the plaintiff-petitioner before the Trial Court during rebuttal evidence.

12. In view of the above, the present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

13. Any observations made herein shall not be treated as an expression of opinion on the merits of the case.

19.11.2025
jk

(ALKA SARIN)
JUDGE

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