

CR-2757-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-2757-2024

Date of decision : 08.04.2026

Hawa Singh

... Petitioner

Versus

Kuldeep Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vikram Singh Punia, Advocate and
Mr. Amit Siwach, Advocate
for the petitioner.

Mr. Sandeep K. Sharma, Advocate,
Mr.Utsav Sharma, Advocate,
Mr.Lakshya Saini, Advocate and
Ms. Shefali Mahendru, Advocate
for respondents no.1 and 2.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.01.2024 (Annexure P-7) passed by the Additional Civil Judge (Sr.Div.), vide which an application for impleading legal heirs of originally impleaded defendant no.3-Sube Singh and another application for transposition of defendant no.3 as plaintiff no.3 was disposed of and liberty to file amended plaint was granted.

2. The present case has unique facts. The impugned order dated



11.01.2024 passed by the trial Court in the backdrop of the said unique facts is in the best interests of all the parties and would also further the cause of properly and finally adjudicating the case, which would be apparent from the following reasons.

3. Respondents no.1 and 2 (Kuldeep Singh and Rahul) had filed a suit for declaration with consequential relief of permanent injunction by impleading three persons as defendants. Defendant no.1 was Hawa Singh, who is the petitioner before this Court, defendant no.2 was Mehtab Singh and defendant no.3 was Sube Singh. The plaint has been annexed as Annexure P-1. A perusal of the plaint would show that it was the case of the plaintiffs Kuldeep Singh and Rahul, who are respondents no.1 and 2 before this Court that Smt.Hoshiari Devi wife of Sube Singh, who was their grandmother, was recorded as owner in possession of the land in question and the said land was purchased out of the income of her husband i.e., Sube Singh (defendant no.3). It was further the case of the said plaintiffs that Hoshiari Devi was not feeling well and thus, was shifted to Tulip Hospital, Sonapat on 15.06.2015 and during the course of investigation, it was detected that she was having brain tumor and was thus given the treatment by the doctor for the said ailment till 19.06.2015 and was also advised follow up treatment and thus, she was very weak and was unable to walk and even her mental and physical condition was not good.

4. It was further the case of the plaintiffs that on 10.07.2015, Rajbir, who is son of defendant no.1, along with his son had come to inquire



about the health of Hoshiari Devi and had taken her to their village and thereafter had fraudulently and by misrepresentation got deeds of two family properties executed vide transfer deeds dated 22.07.2015 and 27.08.2015. It was stated that the said Hoshiari Devi had suffered fracture in her hip on 28.08.2015 and died on 29.08.2015. Several grounds were taken in the suit to highlight that the said transfer deeds were illegal, including the ground of the said Hoshiari Devi being a pardanashin lady, aged 81 years and suffering from brain tumor as well as the fact that the said transfer deeds were without consideration etc. It was stated that the said Hoshiari Devi had executed a registered Will dated 28.12.2009 in favour of the plaintiffs and on the basis of said pleadings, the suit for declaring the said registered transfer deeds to be void, illegal, without jurisdiction, ultra-vires and not binding on the rights of the plaintiffs was filed and a further declaration to the effect that the plaintiffs were owners in possession of the entire estate of Hoshiari Devi on the basis of the registered Will dated 28.12.2009 was also sought. Consequential relief of permanent injunction was also prayed for.

5. Sube Singh (defendant no.3), who was the husband of said Hoshiari Devi and the grandfather of the plaintiffs, had filed a counter claim. A copy of the said counter claim has been annexed as Annexure P-2. In the said counter claim, the pleas with respect to the transfer deeds dated 22.07.2015 and 27.08.2015 being fraudulent and the said Hoshiari Devi being a pardanasin lady etc. were raised. The said pleas raised were similar



to the pleas raised in the plaint. Sube Singh had also raised a plea that it was he who was the actual owner and was in physical possession of the suit land and Hoshiari Devi who was his wife was only an ostensible owner as trustee and it was the said Sube Singh who had purchased the property with his own funds in the name of Hoshiari Devi as Hoshiari Devi had no independent source of income. It would be relevant to note that the fact that the property was purchased out of the income of Sube Singh in favour of Hoshiari Devi was also stated in paragraph 2 of the plaint.

6. It is not in dispute that the said Sube Singh died on 02.11.2023. An application for impleading the legal heirs of the said counter claimant Sube Singh was filed, which application has been annexed as Annexure P-3. The application was filed by Kuldeep Singh and Rahul who are the plaintiffs and it was stated that Sube Singh had executed the last and final Will no.743 dated 28.12.2009 which was also registered during his life time and thus, respondents no.1 and 2 who are the plaintiffs had sought to be impleaded as LRs of the counter claimant namely Sube Singh. Another application was filed by the plaintiffs (respondents no.1 and 2 herein) for transposition of defendant no.3 as plaintiff no.3 and for impleading the applicants-plaintiffs no.1 and 2 as legal heirs of proposed plaintiff no.3 Sube Singh.

7. The trial Court, after considering all the aspects and the peculiar facts of the case, passed an order dated 11.01.2024 giving the following directions:-

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“Other defendants or any other persons has not claimed himself/herself to be the legal heirs/ legal representatives of the Sube Singh/defendant no. 3/ counter-claimant. Plaintiffs are claiming themselves to be the legal heirs/ legal representatives of defendant no. 3 Sube Singh on the basis of the will allegedly executed by Sh. Sube Singh (now deceased) and if the plaintiffs are impleaded as the legal heirs of that Sube Singh (now deceased) and Sube Singh is not deleted from the array of defendants then it would cause complications because the plaintiffs would also be present on the opposite side i.e. side of the defendants. The alleged rights of the plaintiffs to claim the property of Sube Singh have taken birth from the death of Sube singh/ defendant no. 3. If the plaintiffs are directed to file the another suit for pressing their alleged rights which allegedly taken birth after the death of Sube Singh (now deceased) then it would give rise to multiplicity of proceedings which would neither in favour of the plaintiff nor the defendant. Hence this situation can be dealt by making the arrangements in which rights of all the parties are protected and multiplicity of proceedings are avoided. So in these circumstances, following arrangements is hereby made:

- i) Sube Singh (now deceased) is directed to be deleted from the array of defendants.*
- ii) Since now the plaintiffs are claiming the ownership of the property through the line of Sube Singh also on the basis of alleged execution of Will by Sube Singh in favour of the plaintiff so ultimately the rights of the plaintiffs (being beneficiary of the alleged Will allegedly executed by Sube Singh) are as stake and when it is so, Sube Singh is not required to be impleaded/ transposed as the plaintiff. Because if done so, then it would be very difficult to separate the pleadings and the plaintiffs would have to take the pleadings on behalf of Sube singh which can be contradictory to the stand of the plaintiffs.*
- iii) Since there is the deletion of defendant no. 3 and since there is the alleged birth of new alleged rights in favour of the plaintiffs on the basis of the alleged execution of the Will by Sube singh (now deceased) so the plaintiffs would be at liberty to amend their plaint taking the plea of their new rights as well.*

However, it is made clear that at the time of the amendment of the



plaint, the plaintiffs/ applicant would be very cautious and would not withdraw the admission, (if any) by the plaintiffs in their earlier pleadings/ plaint and if done so and if a contrary pleadings is taken by the plaintiffs then the defendants would be at liberty to take the objection on the same and that objections shall be decided as per law.

With these observations, the present applications stands disposed of.

Now case is adjourned to 12.3.2024 for filing of amended plaint, if any by the plaintiffs.”

A perusal of the above order would show that the trial Court had after considering the rights of all the parties which were required to be determined and adjudicated and in order to avoid multiplicity of litigation and also for the smooth trial to be held, passed an order balancing the interest of all parties, which order deserves to be upheld.

8. From the facts and circumstances of the present case, the following facts stand out:-

i) The plaintiffs have stated in their plaint that the property which was in the name of Hoshiari Devi, the grandmother, was purchased out of the income of her husband i.e., Sube Singh. It would be relevant to note that Sube Singh (defendant no.3) had also in his counter claim taken the plea that he had purchased the property from his funds in the name of Hoshiari Devi and Hoshiari Devi had no independent income and thus, it was he who was the actual owner of the property and Hoshiari Devi was an ostensible owner.



ii) The registered transfer deeds dated 22.07.2015 and 27.08.2015 in favour of defendant no.1, who was the brother of Hoshiari Devi, were challenged on the ground of fraud and several other aspects which have been detailed in the plaint. Sube Singh in his counter claim had also challenged the said transfer deeds on the ground of fraud etc.

iii) Since Sube Singh had died and it is the case of the plaintiffs that there is a registered Will dated 28.12.2009 executed in favour of the said plaintiffs and before this Court it has not been highlighted that any other person is raising the claim with respect to being LR's of Sube Singh. Thus, as per settled law, the plaintiffs, as legal representatives of Sube Singh, have a right to pursue the counter claim filed by Sube Singh and to pursue his pleas. The plaintiffs also have a right to pursue the pleas raised by the plaintiffs in the plaint.

9. By virtue of the impugned order, the dispute between the parties stands crystallized and the issues which would be required to be determined would be as under:-

i) Whether Sube Singh was the real owner of the property in question and his wife Hoshiari Devi was only an ostensible owner as it is the plea raised by Sube Singh which is now being pursued by his LR's that he had paid money to purchase the property and Hoshiari Devi had no independent source of



income. The onus to prove the said issue would be on the plaintiffs. Needless to say that both the parties would be given adequate opportunity to lead evidence with respect to the respective stands on the said issue.

ii) Whether the said Sube Singh executed a registered Will dated 28.12.2009 in favour of the plaintiffs, the onus of the said issue would also be on the plaintiffs. Needless to say that both the parties would be given adequate opportunity to lead evidence with respect to the respective stands on the said issue.

iii) Whether in case issues no.1 and 2 or either of the two issues are not proved, then, the other issues which would arise for consideration would be whether Hoshiari Devi is the owner of the property and whether transfer deeds allegedly executed by Hoshiari Devi in favour of defendant no.1-petitioner were fraudulent and illegal etc. Needless to say that both the parties would be given adequate opportunity to lead evidence with respect to the respective stands on the said issue.

iv) In case it is shown that the said transfer deeds were fraudulent or illegal, then, other relevant issue would be to the effect that whether the said Hoshiari Devi had executed a registered Will in favour of the plaintiffs. The onus of proving the said issue would be on the plaintiffs. Needless to say that both the parties would be given adequate opportunity to lead



evidence with respect to the respective stands on the said issue.

v) Once the abovesaid issues stand crystallized, then, adjudication on the same would help in finally and properly adjudicating the rights of the parties in the suit land. In the amended plaint (Annexure P-8) filed by the plaintiffs in pursuance of the impugned order, all the abovesaid pleas have been taken. It would be open to the petitioner to file an amended written statement rebutting all the averments made in the plaint and all the aspects would be considered by the trial Court during the course of trial. In case the impugned order had not been passed, then, several disputes would have arisen between the parties, moreso, on the aspect as to how the trial Court is required to proceed in the present case. The plaintiffs would have necessarily required to be given right to lead evidence with respect to the pleas raised in the plaint and would also have to be given right to pursue the pleas on behalf of the counter claimant Sube Singh as his LR's. In the said situation, one of the issue which would have arisen would have been as to at what stage defendant no.1-petitioner should be given right to lead defence evidence, whether the same should be after the plaintiffs evidence is completed or after the evidence which the plaintiffs are required to lead on behalf of the counter claimant. There would also have been an issue with



respect to the stage the rebuttal evidence would be required to be led. Now after filing of the amended plaint in which all pleas have been taken, defendant no.1-petitioner prior to leading his defence evidence, would be aware of the entire stand of the plaintiffs and the evidence led regarding the same. The same would in fact benefit defendant no.1-petitioner also to defend his rights.

10. In the said circumstances, the arguments raised on behalf of learned counsel for the petitioner to the effect that the pleas raised by the plaintiffs are contradictory and the amendment is to be allowed only in a case where the party is to be added under Order 1 Rule 10(4) CPC, would not call for setting aside the impugned order. The provision of Order 1 Rule 10(4) CPC mandates that in a case where a party is sought to be added, the plaint shall be amended, however, does not take away the prerogative of the Court to permit such amendment, which is necessary for the proper and final adjudication of the case and which would serve the purpose of justice.

11. The Hon'ble Supreme Court in the case of *"Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil"*, reported as *(2010) 8 Supreme Court Cases 329*, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said



judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

12. Keeping in view the above said facts and circumstances, the impugned order dated 11.01.2024 is well reasoned and deserves to be upheld and is upheld and the present revision petition stands dismissed.

(VIKAS BAHL)
JUDGE

April 08, 2026.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No