



CR No.3831 of 2024 (O&M)

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

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CR No.3831 of 2024 (O&M)
Date of Decision:08.04.2026

HARJINDER SINGH

.....Petitioner

Vs

AMANDEEP KAUR

....Respondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

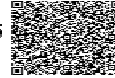
Present: Mr. Vipin Mahajan, Sr. Advocate with
Ms. Manju Fulara, Advocate
for the petitioner.

Mr. G.S. Sirphikhi, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

[1]. By way of present revision petition, challenge has been laid to the order dated 07.05.2024 passed by the learned Additional Civil Judge (Senior Division), Batala, whereby prayer made on behalf of the petitioner/defendant for seeking amendment of his written statement was declined.

[2]. Briefly stating, in the given facts, a suit for declaration came to be filed at the instance of respondent/plaintiff while claiming herself to be the absolute owner in possession of the estate left by her deceased father, namely Gurdial Singh, as detailed in the suit, while alleging that the mutation of inheritance to the extent of half share entered in favour of the petitioner/defendant after the death of Gurdial Singh on 19.04.2005, was illegal. Respondent-plaintiff also prayed for grant of permanent injunction with a prayer for restraining petitioner-defendant from alienating any part of suit property. It was pleaded that the respondent was the only child born out of the wedlock of deceased-Gurdial



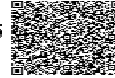
Singh with her mother namely Surinder Kaur whereas the petitioner-defendant was son of Tarsem Singh who happened to be the real brother of her father Gurdial Singh.

[3]. In response, a written statement was filed on behalf of the petitioner/defendant while claiming himself to be the son of Gurdial Singh thus, asserting that the mutation with respect to the half share of the estate left by the deceased Gurdial Singh was rightly sanctioned in his favour. It was further denied that the petitioner was son of Tarsem Singh. The issues were framed by the learned Trial Court on 22.07.2022 and thereafter the matter was posted for evidence of respondent/plaintiff. During the said stage, an application under Order 6 Rule 17 read with Section 151 CPC was filed by the petitioner/defendant seeking amendment of the written statement to the following effect:-

(i). *That, the defendant be allowed to write the following words after the words "son of said Gurdial Singh" and "before the words" The said Gurdial Singh" in 13th line of para no. 3 of the written statement:*

"That, the wife of Gurdial Singh namely Shindo had already expired. The said Gurdial Singh and Kulwant Kaur wife of Tarsm Singh had physical relations with each other and out of the said relations, Harjinder Singh defendant was born and due to this reason, the father's name of the defendant has been mentioned as Gurdial Singh and mother's name of the defendant has been mentioned as Kulwant Kaur in the certificates/documents ie Birth Certificate, Ration Card, Voter Card, School Certificate, Passport etc.."

[4]. The aforesaid prayer was opposed at the instance of the respondent/plaintiff. The learned Trial Court, vide order dated 07.05.2024, rejected

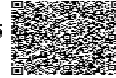


the application filed by the petitioner/defendant. Hence the present revision petition.

[5]. Impugning the aforesaid order, learned Senior counsel representing the petitioner/defendant submits that the amendment of the written statement as prayed for was merely clarificatory in nature and never created any new case. While placing reliance upon the decision made by the Hon'ble Apex Court in the case of 'Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi and Ors., 2006(2) R.C.R. (Civil) 577', learned Senior counsel submits that the truth and veracity of the averments sought to be incorporated were not to be tested at the stage of consideration upon the application for amendment, and that such amendment was necessary for complete and effective adjudication of the case in hand while granting the petitioner/defendant an opportunity to put forth his defence in the suit. Relevant para no.16 of the aforementioned judgment is extracted hereunder:-

"16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."

[6]. On the other hand, learned counsel for the respondent/plaintiff submits that by way of seeking amendment of the written statement, the



petitioner/defendant seeks to introduce, an altogether new case. It is contended that while in the original written statement the petitioner claimed himself to be the son of deceased Gurdial Singh, whereas by way of amendment he now seeks to plead that he was born out of alleged relationship between Gurdial Singh and Kulwant Kaur wife of Tarsem Singh (i.e. real mother of the petitioner/defendant). Learned counsel thus, submits that no such amendment was to be permitted especially after framing of issues and commencement of trial, hence the application was rightly declined by the learned Trial Court.

[7]. I have heard learned counsel for the parties and perused the paper book. With all due respect, I am unable to find substance in the submissions made on behalf of the petitioner.

[8]. In the given facts, the original written statement filed by the petitioner/defendant clearly reflects that the entire defence put forth by him was about claiming himself to be the real son of deceased Gurdial Singh, whereas by way of amendment sought to be incorporated, he now was claiming himself to be born out of the physical relations of deceased Gurdial Singh and Kulwant Kaur wife of Tarsem Singh (i.e. the mother of the petitioner/defendant). In such circumstances, there was a complete shift in the defence set up by the petitioner/defendant which cannot be permitted to be raised by way of seeking amendment in the written statement and that too after framing of issues and commencement of trial.

[9]. Furthermore, the contention raised on behalf of the petitioner to the effect that at the stage of dealing with the application for seeking amendment of the written statement, the truth and veracity of the averments sought to be incorporated were not to be tested or adjudicated; has no merits. Even by taking the



averments sought to be incorporated by way of amendment at their face value, the same in terms of Section 112 of the Indian Evidence Act, 1872 do not support the cause of petitioner/defendant in any manner so as to strengthen his defence as regards his claim in the property left by the deceased Gurdial Singh. At this stage, before proceeding further, it may be relevant to understand the exposition of law by the Hon'ble Apex Court in the decisions rendered with respect to the statutory presumption emanating from Section 112 of the Indian Evidence Act, 1872. In this regard, the following judgments are being relied upon:-

1. *R. Rajendran vs. Kamar Nisha And Others* 2025 AIR Supreme Court 5605,
2. *Shyam Lal @ Kuldeep vs. Sanjeev Kumar and others*, 2009 (12) SCC 454,
3. *Aparna Ajinkya Firodia vs. Ajinkya Arun Firodia*, 2024 (7) SCC 773;
4. *Shri Banarsi Dass vs. Mrs. Teeku Dutta and Anr.*, 2005 (4) SCC 449

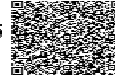
[9.1] As per the law laid down by the Hon'ble Apex Court, Section 112 of the Indian Evidence Act, 1872, embodies a rule of conclusive presumption with regard to the legitimacy of a child born during the subsistence of a valid marriage.

For reference Section 112 of the Act is reproduced hereunder:-

“Section 112 : Birth during marriage, conclusive proof of legitimacy.

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

[9.2]. Furthermore, the same is based on the well-known maxim “*pater est quem nuptiae demonstrant*” which states that he is the father whom the marriage indicates and a presumption under the said Section is conclusive in nature and not



merely rebuttable on the basis of probabilities. The same can be displaced only by clear, cogent and satisfactory pleadings and proof of non-access between the spouses at the relevant time. The expression “access” denotes the existence of an opportunity for sexual intercourse, whereas, “non-access” signifies the impossibility thereof, and not a mere absence of opportunity. Proof of non-access may be established through circumstances such as impotency, serious illness, physical incapacity, or prolonged absence of one of the spouses. However, mere allegations or even proof of adultery, separate residence, or strained relations between the parties would not be sufficient to rebut the statutory presumption. The burden to establish non-access lies entirely on the party alleging it, and the standard of proof required is higher than that of a mere preponderance of probabilities.

It is a settled proposition of law and the Courts have consistently held that legitimacy is to be presumed unless non-access is affirmatively proved. Even in cases where infidelity is alleged or established, the presumption of legitimacy would continue to operate so long as it is shown that the husband had access to the wife during the relevant period. The presumption arises from the factum of birth during a valid marriage, though the question of conception assumes relevance for determining access.

[10]. In the amendment sought for in the present case, it has nowhere been pleaded or averred in the application that during the time period when Kulwant Kaur and deceased Gurdial Singh were in physical relationship and the petitioner/defendant was conceived and born, the husband of Kulwant Kaur namely Tarsem Singh had no access to her so as to displace the statutory presumption under Section 112 of the Indian Evidence Act, 1872. In such



circumstances, in the absence of such pleadings either in the original written statement or even in the amended one by no stretch of imagination it can be said that the amendment sought for by the petitioner/defendant in any manner was essential for the just and effective adjudication of the case in hand.

[11]. Accordingly, there being no illegality or perversity in the reasonings recorded by the learned Trial Court, while rejecting the prayers made by the petitioner-defendant for seeking amendment of written statement, no interference is called for in the impugned order. Accordingly, the present petition stands dismissed being devoid of merits.

[12]. All pending application(s), if any, shall also stand disposed of.

April 08, 2026
Atik

(HARKESH MANUJA)
JUDGE

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