

CR-6414-2019 (O&M) and

CR-6446-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

(121)

1.

CR-6414-2019

Indermohan Singh and others

....Petitioners

Versus

Manmohan Singh and others

.....Respondents

2.

CR-6446-2019

Harmohan Singh and others

....Petitioners

Versus

Manmohan Singh and others

.....Respondents

Date of decision: - 26.02.2026

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vishal Aggarwal, Advocate, for the petitioners.

Mr. Gurcharan Dass, Advocate, and
Ms. Ravinder Kaur, Advocate, for respondent No.1.

Mr. Harpreet Singh, Advocate, for respondent No.2.

VIKAS BAHL, J. (ORAL)

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CHALLENGE IN THE CASES

1. Present order would dispose of two civil revision petitions both of which have been filed by defendants No.2 to 5 and are arising from the same suit. In CR-6414-2019, challenge is to the order dated 31.07.2019 (Annexure P-7) vide which the application filed by the petitioners for amendment of the written statement, after the trial had commenced, has been dismissed. In CR-6446-2019, challenge is to the order dated 31.07.2019 (Annexure P-9) vide which the application filed by the plaintiff/respondent No.1 for deletion of new paragraphs added in the amended written statement filed by the petitioners, was allowed.

ARGUMENTS ON BEHALF OF THE PETITIONERS

2. Learned counsel for the petitioners has submitted that in the present case, there is a Will executed in favour of petitioners No.1 & 2/ defendants No.2 and 3 by Takhat Singh, the admitted owner of the property. It is further submitted that however on account of typographical error while responding to para 5 of the plaint, in the written statement filed by the petitioners/defendants it was inadvertently stated that the averments to the effect that there is no legal Will were “not denied”. It is submitted that in fact the petitioners/defendants wanted to deny the said averments as there was a Will in favour of petitioners No.1 and 2. It is further argued that a perusal of the entire original written statement would show that it was the case of the petitioners that the present plaintiff was a consenting party for transfer of the ownership of the property in dispute in the name of defendant no.1 however on account of a typographic mistake



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in para 9 instead of the word 'consenting party', the word 'contesting party' had been mentioned. It is further submitted that the application filed by the petitioners for amendment of the written statement on the said two aspects has been dismissed by the trial Court vide order dated 31.07.2019 (Annexure P-7) and the impugned order is illegal and deserves to be set aside as only the typographical errors are required to be corrected by the petitioners. It is argued that the said order dated 31.07.2019 (Annexure P-7), which is subject matter of challenge in CR-6414-2019, be set aside and the said revision petition be allowed.

3. Learned counsel for the petitioners while arguing CR-6446-2019 has submitted that in the present revision petition, challenge is to the order vide which the application filed by respondent No.1/plaintiff for deletion of the new pleas which had been taken in the amended written statement in response to the amended plaint, had been allowed. It is further submitted that in case, CR-6414-2019 is allowed and the petitioners are permitted to carry out the necessary amendments as prayed for in the application for amendment, then, the present revision petition would be rendered infructuous. It is further submitted that in case the said revision petition (CR-6414-2019) is dismissed, then, the aspect that the amended written statement which was filed in response to the amended plaint is in accordance with law, be considered.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1/PLANTIFF

4. Learned counsel for respondent No.1, on the other hand, has submitted that respondent No.1/plaintiff had filed a suit for declaration to



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the effect that the sale deed dated 10.11.2009 executed in favour of defendant No.1 was illegal, null and void and had prayed for 1/6th share of the suit property on the plea that Takhat Singh, the father of the plaintiff as well as defendants No.2 to 5 was the admitted owner of the property and that he had not executed any Will and was survived by six legal heirs. It is further submitted that in the written statement filed by defendants No.1 to 5, which included the present petitioners, no plea with respect to any Will was set up and thus, in consonance with the averments in the written statement, the para No.5 of the plaint was not denied. It is stated that on the basis of the pleadings of the parties, the issues were framed and no issue with respect to Will was framed.

5. It is further argued that since defendant No.1 had further executed a transfer deed in favour of defendants No.2 and 3 during the pendency of the case, thus, respondent No.1/plaintiff was forced to file an application for amendment of the plaint to challenge the said transfer deed which had been executed during the pendency of the suit. It is argued that the petitioner had cleverly by filing the amended written statement to the amended plaint added paragraphs which were beyond the scope of the amended written statement and thus, the plaintiff/respondent No.1 moved an application for deletion of the said paragraphs and the trial Court rightly vide order dated 31.07.2019 (Annexure P-9 in CR-6446-2019) allowed the said application. It is also argued that since the petitioners were aware that the said addition was not in accordance with law, thus, the petitioners had also filed an application for amendment



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of written statement trying to amend the averment made in para 5, which is not permissible. It is submitted that it could not even remotely be stated that non-denial of there being no Will in favour of defendants executed by Takhat Singh was a typographical error rather the same is an admission, which admission is in consonance with the other averments made in the written statement. It is submitted that the evidence of the plaintiff has been completed and the defendants have not set up any pleas qua any Will and thus, the application for amendment has only been filed to delay the proceedings and is without due diligence. It is further submitted that the order vide which the amendment application has been dismissed is in accordance with law and deserves to be upheld.

ANALYSIS AND FINDINGS

6. This Court has heard learned counsel for the parties and has perused both the revision petitions and finds the impugned order passed in CR-6446-2019 is in accordance with law and deserves to be upheld and the impugned order passed in CR-6414-2019 deserves to be partly allowed for the reasons which have been detailed hereinafter.

7. It is not in dispute that respondent No.1-Manmohan Singh/plaintiff had filed a suit with the following prayers: -

“It is, therefore, prayed that a decree for declaration declaring the sale deed no. 7507 dated 10.11.2009 of plot no. 66-1, Sarabha Nagar, Ludhiana executed by defendant no. 6 in favour of defendant no. 1 excluding the plaintiff, as null and void, illegal, non- est, not having legal value and force in the eyes of law and not binding on the plaintiff and suit for the cancellation of said sale deed dated 10.11.2009 of plot no. 66-1, Sarabha Nagar, Ludhiana



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and suit for mandatory injunction directing the defendant no. 6 to execute fresh sale deed of 1/6th share in the suit property in favour of the plaintiff and suit for possession of one sixth share in plot no. 66-1, Sarabha Nagar, Ludhiana measuring 345.50 sq. yards which has been shown as red in the site plan attached and bounded as under:-

<i>North:</i>	<i>Plot No. 67-1</i>
<i>South:</i>	<i>Road 30' wide</i>
<i>East:</i>	<i>30 ft. wide Road</i>
<i>West:</i>	<i>Plot No. 90-1</i>

AND

Suit for permanent injunction restraining the defendants not to sell, transfer, mortgage, damage, demolish or alienate in any manner whatsoever, the suit property to any other person be granted in favour of the plaintiff and against the defendants.

Any other additional or alternative relief to which the plaintiff is found entitled to in the circumstances of this case be also granted to the plaintiff.

Place: Ludhiana

Sd/- Plaintiff

Dated 19.1.2011

Through Counsel

Sd/- (L.D. Gupta, Advocate) ”

8. In the said suit, the present petitioners were defendants No.2 to 5 and were the brothers and sisters of respondent No.1-Manmohan Singh. A perusal of the plaint would show that it was the case of the plaintiff that Takhat Singh, the father of the plaintiff as well as of defendants No.2 to 5 and husband of defendant No.1 was the owner of the property in question, as he was allotted a plot vide allotment letter dated 01.07.1969 by defendant No.6. It was further the case of the plaintiff that



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Takhat Singh had not executed any legal Will regarding the suit property during his life time and the plaintiff being one of the six legal heirs of Takhat Singh was entitled to 1/6th share of the property and the sale deed executed in favour of defendant No.1 alone was illegal. Para 5 of the said plaint is reproduced herein below: -

“5. That the deceased S. Takhat Singh did not execute any legal WILL of this suit property in his life time and died without executing any WILL.”

9. A joint written statement was filed by the defendants No.1 to 5, which included the petitioners who are defendants No.2 to 5. In the entire written statement no plea with respect to any Will was raised. It is a matter of settled law that if a party is relying upon a Will, then, specific pleas regarding the said Will are required to be made and the onus of proving the said Will is on the party which relies upon the said Will. The fact that Takhat Singh was allotted the plot in question and that the plaintiff along with defendants no.1 to 5 were the legal heirs of the said Takhat Singh was not disputed in the pleadings. The primary defence raised in the written statement was that all the legal heirs of Takhat Singh had consented to the sale deed being executed in favour of defendant No.1. Since no Will had been pleaded, thus, para 5 of the plaint was not denied in the written statement. Para 5 of the written statement is reproduced as under: -

“5. That para no.5 of the plaint is not denied.”



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10. Since no Will was pleaded, thus, no issue regarding the same was framed. Although a copy of the issues has not been annexed but learned counsel for the petitioners during the course of arguments has handed over a copy of the said issues which were framed vide order dated 14.09.2015 and the same is reproduced hereinbelow:-

“CS/41792/2013

Present: Sh. C.D. Gupta counsel for the plaintiff.

Sh. Sudesh Mahajan counsel for the defendants No.1 to 5.

Sh. Rajesh Kashyap counsel for the defendant No.6.

Defendant No.7 ex-parte.

Arguments not advanced. Counsel for the plaintiff requested for adjournment. Perusal of the file reveals that the present case has been filed by the plaintiff on 24.01.11 and the case was fixed for consideration on the stay application on 11.02.14 and since then, the present case is lingering on for consideration on the stay application, which seems that there is no urgency to the plaintiff to dispose of the stay application. Hence, the stay application is hereby disposed of being not pressed.

Heard. From the pleading of the parties following issues are framed:-

- 1 Whether the plaintiff is entitled for decree of declaration as prayed for?OPP*
- 2 Whether the plaintiff is entitled for decree of cancellation of sale deed dated 10.11.09 as prayed for?OPP*
- 3 Whether the plaintiff is entitled for decree of mandatory injunction as prayed for?OPP*
- 4 Whether the plaintiff is entitled for decree of possession of one sixth share as prayed for?OPP*
- 5 Whether the plaintiff is entitled for decree of permanent injunction as prayed for?OPP*
- 6 Whether the suit of the plaintiff is not maintainable?OPD*



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- 7 *Whether the plaintiff is estopped by his act and conduct to file the present suit?OPD*
- 8 *Whether the plaintiff has served with notice U/s 98 of the Punjab Town Improvement Act upon defendant No.6?OPD-6*
- 9 *Whether the plaint is liable to be rejected U/o 7 rule 11 CPC?OPD-6*
- 10 *Whether the suit of the plaintiff is barred by limitation, delay and latches?OPD-6*
- 11 *Whether no cause of action accrued to the plaintiff to file the present suit?OPD-6*
- 12 *Relief.*

*No other issue arises, pressed or claimed for. **Now to come upon 3.10.15 for evidence of the plaintiff.** PF/DM and list of witnesses, if any, be filed within three days*

*(Rajwinder Kaur-I)
CJJD/Ldh./14.9.15”*

11. It is not disputed before this Court that the plaintiff has led his entire evidence after taking into consideration the pleadings of the parties in which there is no averment/plea with respect to any Will set up by the defendants, rather non-execution of the Will is an admitted fact. Defendant No.1 during the pendency of the suit had transferred the suit property in favour of defendants No.2 and 3. Respondent No.1/plaintiff was thus forced to file an application for amendment to challenge the said transfer deed also, which was allowed on 20.08.2018. The amended plaint dated 09.09.2018 filed in pursuance of the said order has been annexed as Annexure P-4 along with CR-6414-2019. A perusal of the same would show that the only amendment which has been made in the plaint is with



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respect to adding the prayer clause and para 15-A and para 15-B to the effect that the transfer deed has been executed during the pendency of the suit in spite of the fact that the matter was sub-judice. The petitioners cleverly by filing the amended written statement to the amended plaint made several changes in the amended written statement which could not have been made. New pleas were sought to be taken and in para 5 of the written statement, it was sought to be stated that the said para of the plaint was denied and it was further sought to be pleaded that Takhat Singh had executed a legal and valid Will before his death. Instead of responding to the added paras in the amended plaint i.e. para 15-A and para 15-B, the defendants cleverly added new pleas including the plea taken in para 5. The said amended written statement has been annexed as Annexure P-6 along with CR-6446-2019.

12. Respondent No.1/plaintiff immediately thereafter moved an application for deletion of the said new paras added in the amended written statement. The said application has been annexed as Annexure P-7 along with CR-6446-2019. A perusal of the said application would show that it had been highlighted by respondent No.1 that in pursuance of the order dated 20.08.2018 the plaintiff had filed the amended plaint but the petitioners had taken time to file the amended written statement and did not file the same from 25.09.2018 to 05.12.2018 and it was only on 15.02.2019 that the said amended written statement was filed and several new pleas were taken. The trial Court vide order dated 31.07.2019 (Annexure P-9 in CR-6446-2019) allowed the said application and



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observed that the petitioners/defendants had made changes in the written statement which were unwarranted and against the law and the same had been done in spite of the fact that the petitioners themselves had on 05.09.2018 filed an application under Order 6 Rule 17 CPC for amendment of the written statement and without waiting for an order to be passed on the said application, much less, the said application being allowed, the petitioner added new pleas which were not permissible. The said order dated 31.07.2019 (Annexure P-9 in CR-6446-2019) is in accordance with law and deserves to be upheld. It is a matter of settled law that once an amendment in the plaint has been allowed, then, it is only the paragraphs which were sought to be amended in the plaint to which a response is required to be given in the amended written statement, more so, in a case like the present case in which the sole amendment sought by the plaintiff was to challenge the transfer deed executed by defendant No.1 in favour of defendants No.2 to 5 during the pendency of the suit. The said aspect could not be disputed on behalf of the petitioners before this Court.

13. Even an application filed by the petitioners for amendment of the written statement was dismissed vide order dated 31.07.2019 (Annexure P-7) which is subject matter of challenge in CR-6414-2019. In the impugned order, it was observed that the petitioners were trying to wriggle out of the admission made by the petitioners in the original written statement, inasmuch as, in the said written statement while responding to para 5 of the plaint the factum that no legal Will was



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executed by Takhat Singh was not denied and the trial Court had observed that the same could not be permitted. It was further stated that the said application had been filed after a period of 5½ years from the date of filing the original written statement and the trial had commenced and had made much progress and thus, even on account of lack of due diligence, the said amendment could not have been allowed. The said order is in accordance with law and deserves to be upheld.

14. Additionally, it would be relevant to mention that in the entire written statement no plea with respect to the aspect that there was Will in favour of any of the defendants had been raised. No issue regarding the said Will has been framed as no such plea was taken. The plaintiff has led his entire evidence and as has been stated before this Court he had closed his evidence in affirmative on 15.09.2017 on the basis of the pleadings of the parties and also on the basis of fact that there was no averment qua any Will set up by the defendants. A reading of the pleadings of the original plaint and the original written statement would show that the fact that Takhat Singh was the original allottee of the property in question is not disputed and even the fact that Takhat Singh had six legal heirs including the plaintiff/respondent No.1 and petitioners and also the fact that there was no legal Will executed by the said Takhat Singh is not in dispute and the primary defence raised in the written statement to oppose the right of the plaintiff to succeed to 1/6 share of suit property was that he was a consenting party to the sale deed made in favour of defendant No.1. In the said circumstances, it is apparent that



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para no.5 of the written statement which did not deny that Takhat Singh had not executed any legal Will was in consonance with the other averments made in the written statement. In the said circumstances, it is apparent that the plea taken in para 5 of the written statement cannot be remotely stated to be a typographical error and by virtue of the amendment, the admission which was made by the petitioners which is sought to be withdrawn, cannot be permitted, more so, once the trial has commenced and even the plaintiff has completed his entire evidence. With respect to averment made in para 5, this Court is of the view that the amendment sought is not bona fide.

15. The second amendment which has been sought in the present case is with respect to the averments made in para 9 of the written statement. Para 9 of the original written statement is reproduced as under:-

*“9. That para no.9 of the plaint is wrong and denied. The plaintiffs has been left with no right, title or interest in the suit property. He himself a **contesting party** for the transfer of the ownership of the property in dispute in the record of the defendant no.6 in the name of the defendant no.1 alone.”*

16. In the above-said para, it has been mentioned that the plaintiff was himself a contesting party for the transfer of the ownership. The petitioners want to replace the said word 'contesting party' by the word 'consenting party'. A perusal of the entire written statement would



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show that it was the case of the defendants that the plaintiff along with other defendants No.2 to 5 had given consent to transfer property in favour of defendant No.1. In the said circumstances, the plea of the petitioners to the effect that the intention of the petitioners was to write the word 'consenting party' in para 9 instead of 'contesting party' and the same was a typographical error, is weighty.

17. Learned counsel for respondent No.1, who is a contesting party, has fairly submitted that as far as the amendment in para 9 with respect to the said word is concerned, the same could be allowed as the said amendment is in consonance with the other averments made in the written statement.

18. Keeping in view the above-said facts and circumstances, the order dated 31.07.2019 (Annexure P-9), which is the subject matter of challenge in CR-6446-2019, is upheld and CR-6446-2019 is dismissed. However, CR-6414-2019 is partly allowed and the impugned order dated 31.07.2019 (Annexure P-7) is partly set aside, only to the limited extent that the amendment sought to be made in para 9 to replace the word 'contesting party' with 'consenting party' is permitted. It is clarified that no other amendment, much less, amendment sought to be made in para 5 of the written statement is allowed.

19. It is made clear that the observations made in the present order are only for the purpose of deciding the present revision petitions in which challenge is on the aspect of amendment of the pleadings and the said observations should not be construed as an expression on the final

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merits of the case and the trial Court would decide the suit independent of the observations made in the present order, on the basis of the pleadings, evidence and the record.

February 26, 2026

naresh.k

(VIKAS BAHL)

JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes