



CR No.7374 of 2023

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

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Civil Revision No.7374 of 2023

Date of decision: April 1st, 2026

Poonam Jain (now deceased) through her LR Ruchika Jain and another

.....Petitioners

Versus

Mukta Jain

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Anshuman Chopra,
Mr. Deepesh Kakkar and Mr. Gaurav Gupta, Advocates
for the petitioners.

Mr. Kahish Garg, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a civil revision petition under Article 227 of the Constitution of India for setting aside the order dated 11.08.2023 vide which the application filed by the respondent-plaintiff for amendment of the plaint under Order VI Rule 17 read with Section 151 CPC has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONERS/DEFENDANTS

2. Learned counsel for the petitioners has submitted that in the present case, the application filed by respondent-plaintiff for amendment of the plaint has been allowed and by virtue of the same, the respondent has been permitted to raise the plea with respect to the alleged unregistered Will dated 16.03.1994. It is submitted that the said unregistered Will has not seen the light of the day for the past 30 years and apparently a plea on the basis of a false document is now sought to be raised. It is further submitted that in case the said amendment is allowed, the nature of the suit would change and



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thus, the impugned order vide which the application under Order VI Rule 17 CPC has been allowed deserves to be set aside and the application for amendment of the plaint deserves to be dismissed.

ARGUMENTS ON BEHALF OF THE RESPONDENT/PLAINTIFF

3. Learned counsel for the respondent, on the other hand, has submitted that in the present case, it is the respondent-plaintiff who has filed the suit for declaration with respect to residential house measuring 250 square yards and thus, the delay in the proceedings would primarily prejudice the plaintiff. It is further submitted that the admitted owner, to the extent of half share, of the property in question is Rakesh Jain who is the father of the plaintiff as well as petitioner No.2 and the Will in question pertains to the suit property and it was only one week before the filing of the application for amendment under Order VI Rule 17 CPC that the plaintiff learnt about the said unregistered Will, which she had found from the old record. It is submitted that the plea with respect to the said unregistered Will is very necessary for the proper and final adjudication of the case and would also help in avoiding multiplicity of litigation. It is submitted that neither the nature of the suit would change nor any prejudice would be caused to the petitioners as they would have a right to file an amended written statement and raise pleas against the said unregistered Will.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the parties and has perused the paper book and finds that the impugned order dated 11.08.2023 (Annexure P-1) is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the

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reasons stated hereinafter.

5. It is not in dispute that the respondent-plaintiff had filed a suit for declaration challenging the transfer deed dated 18.06.2019 which was stated to have been executed by the plaintiff along with defendant No.2 in favour of defendant No.1 with respect to residential house measuring 250 square yards. The headnote of the said suit is reproduced hereinbelow:

“Suit for declaration to the effect that the alleged transfer deed no.2786 dated 18.6.2019 allegedly executed by the plaintiff alongwith defendant no.2 in favour of the defendant no.1 regarding the transfer of ownership of their 2/6 share in the residential house measuring 250 sq.yds. which comes out to 83.33 sq.yds., bearing M.C. No. 21836, New UID NO. MCB-22/04720, comprising in khewat no.6, khatauni no.149 bearing khasra nos. 2514 min (0-5) as per jamabandi for the year 2012-13, which is abounded as under:-

East: 30’ Street 20’ wide

West: 30’ House of Bhandari;

North: 75’ Darshna Rani w/o Dinesh Kumar;

South: 75’ Ramesh Kumar Sharma;

Situated in Street NO.4, Shiv Mandir Wali Gali, Power House Road, Bathinda, is totally wrong, illegal, null and void, result of fraud committed by the defendants no.1 & 2 without any consideration, without delivery of possession, result of mis-representation of facts to the plaintiff, ineffective and inoperative as against the rights of the plaintiff and the same is liable to be set aside and further declaration to the effect that mutation sanctioned in favour of the defendant no.1 on the basis of alleged transfer deed is also totally wrong, illegal, null and void, at the back of the plaintiff, without any notice to the



plaintiff, ineffective and inoperative as against the rights of the plaintiff and as such the same is also liable to be set aside and further declaration to the effect that notwithstanding the alleged transfer deed no.2786 dated 18.6.2019 and Mutation, the plaintiff is still continuing to be co-sharer. in joint possession of the aforesaid residential house measuring 250 sq-yds. to the extent of 1/6 share.

AND

Suit for permanent injunction for restraining the defendant no.1 from further alienating the said residential house measuring 250 sq.yds. in favour of defendant no.2 or any third person, in any manner whatsoever i.e. by way of sale, mortgage, transfer, lease, gift, Will, exchange, collusive decree etc. etc. illegally, arbitrarily and detrimental to the rights and interest of the plaintiff.”

6. The suit was filed in the month of August 2021. On 09.01.2023, before any evidence was led, as is admitted before this Court, the respondent filed an application under Order VI Rule 17 CPC for amendment of the plaint. The amendment sought was to incorporate the plea of there being a Will executed by Rakesh Jain, father of the plaintiff, who was the admitted registered owner to the extent of half share of the house in question, in favour of the plaintiff. It was averred in the application that the plaintiff had found the said Will from the old record, one week prior to the filing of the said application. It was the case of the plaintiff that Rakesh Jain had bequeathed his half share, in the house in question, in favour of the respondent-plaintiff on account of love and affection. The said application was allowed by the trial Court vide order dated 11.08.2023 by observing that the proposed

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amendment was necessary for the purpose of determining the real controversy between the parties and to do substantial justice. The said order is in accordance with law and deserves to be upheld.

7. The Hon'ble Supreme Court in ***Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others***, reported as (2006) 4 Supreme Court Cases 385 has specifically observed that the cardinal principle for allowing an amendment is to see as to whether the same is necessary to decide the real dispute between the parties and at that stage, the Court should not go into the correctness or falsity or the merits of the case in the amendment. The relevant portion of the said judgment is reproduced as under: -

“xxx xxx xxx

18. 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 have expressed certain opinions 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 the rights of both parties and to subserve the ends of justice. It is settled by a 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.

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19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

xxx xxx xxx”

8. The amendment in the present case is very necessary for the proper and final adjudication of the case. It is not disputed before this Court that Rakesh Jain, father of the plaintiff and defendant No.2, was owner to the extent of half share of the residential house in question. By virtue of the amendment, the respondent-plaintiff is wanting to take up the plea that there is a Will in favour of the said respondent-plaintiff from Rakesh Jain with respect to his share in the property in question. Thus, the first question required to be considered during trial would be as to whether Rakesh Jain had executed a Will in favour of the plaintiff. The other question which would be required to be considered would be with respect to the validity of the transfer deed dated 18.06.2019 which is stated to have been executed by the plaintiff in favour of defendant No.1 and which is also regarding the suit property. Once both the issues are considered and decided, the ownership and rights of the plaintiff and defendants in the residential house would be finally and properly adjudicated. The same would also help in avoiding multiplicity of litigation. Moreover, it is not disputed before this Court that at the time when the application under Order VI Rule 17 CPC was filed, no



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witness had been examined and even now as stated before this Court, no witness has been examined and thus, the case is at the initial stage. The petitioners would have every right to rebut the plea taken by the petitioners in the amended plaint, in the amendment written statement which is stated to have already been filed.

9. 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.

10. Keeping in view the above, this Court is of the opinion that the



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impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

April 1st, 2026
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes