

(2013) 07 P&H CK 0442

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4102 of 2013 (O and M)

Hardeep Singh and Another

APPELLANT

Vs

Amarjit Singh and Others

RESPONDENT

Date of Decision: July 11, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Rajinder Kumar Singla, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 14678-CII of 2013:

1. Application is allowed and Annexures P-1 to P-4 are taken on record, subject to all just exceptions.

C.M. No. 14679-CII of 2013:

Allowed as prayed for.

Main Case:

3. Plaintiffs, being aggrieved by order dated 18.05.2013 (Annexure P-4), passed by the trial court, have approached this Court by way of instant revision petition filed under Article 227 of the Constitution of India to assail the said order, whereby application (Annexure P-3) moved by the plaintiffs, for amendment of their plaint (Annexure P-1), has been dismissed.

4. It is unfortunate litigation among siblings. Plaintiffs and defendant no. 1 are sons and defendants no. 2 and 3 are daughters of Mohan Singh. In the suit, the plaintiffs have claimed separate ownership and possession of plaintiffs and defendant no. 1 over different properties in suit, on the basis of Will dated 08.07.2008, allegedly executed by the father of the parties. Defendant no. 1, in his written statement (Annexure P-2), controverted the averments of the plaintiffs regarding the Will and also pleaded the suit property to be coparcenary property in the hands of the father. Various other pleas were also raised.

5. In amendment application (Annexure P-3), the plaintiffs alleged that in the alternative, the plaintiffs want to claim the relief of partition of the suit properties, if the same are held to be joint properties of the parties on the basis of natural inheritance.

6. Defendant no. 1, by filing reply, opposed the amendment application and controverted the averments made therein.

7. Learned trial court, vide impugned order (Annexure P-4), has dismissed the plaintiffs' application for amendment of plaint. Feeling aggrieved, plaintiffs have filed this revision petition to assail the said order.

8. I have heard counsel for the petitioners and perused the case file.

9. Learned counsel for the petitioners emphasized that no evidence is to be led by the plaintiffs after proposed amendment of plaint, and therefore, the same should have been allowed.

10. The aforesaid contention cannot be accepted. According to the proviso to Order 6 Rule 17 of the CPC (in short-CPC), amendment of pleading cannot be allowed after commencement of trial, unless the party seeking amendment could not have raised the matter before commencement of trial in spite of due diligence. In the instant case, the amendment application was moved at the fag end of the trial after both parties had already concluded their evidence. Consequently, the proposed amendment of plaint has been rightly declined because it cannot be said that in spite of exercise of due diligence, the plaintiffs could not have raised this plea (which is sought to be raised by amendment of plaint) before commencement of trial. Proviso to Order 6 Rule 17 CPC is mandatory in this regard.

11. Resultantly, I find no perversity, illegality or jurisdictional error in impugned order of the trial court so as to call for interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is dismissed in limine, being meritless.