

(1990) 08 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 886 of 1989

Jagir Singh and Others

APPELLANT

Vs

Rajdev Kaur and Others

RESPONDENT

Date of Decision: Aug. 21, 1990

Citation: (1990) 98 PLR 639 : (1990) 2 RCR(Rent) 520

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: S.N. Chopra, for the Appellant;

Final Decision: Dismissed

Judgement

G.R. Majithia, J.

This revision petition is directed against the order of Additional District Judge, Patiala whereby he allowed amendment in the written statement on the application filed by the respondents.

2. The facts :

The petitioners (hereinafter referred to as the plaintiffs) filed a suit for declaration to the effect that they were owners in possession of the land detailed at point "X" in the preamble of the plaint and that the defendants were not the owners of said land and further the defendants are not their landlords qua the said land nor the relationship of landlord and tenant exist between them and as a consequent relief the defendants could not evict them under the provisions of Punjab Tenancy Act or Pepsu Tenancy Agricultural Land Act. The defendants had instituted ejectment proceedings against them falsely alleging that they were their tenants.

3. The defendants controverted the allegations made in the plaint and pleaded that original owner of the land in suit was Rachhpal Singh son of Alam Singh of village Lulon. He executed a registered gift deed dated June 24, 1981 in their favour. Mutation on the basis of that gift was also attested in their favour. The plaintiffs were holding tie land as tenants under Rachhpal Singh and after his death, the

plaintiffs become the tenants on the suit land under the defendants. The trial judge decreed the suit of the plaintiffs and held that they were owners of the suit land and not tenants and that the gift deed dated June 24, 1981 was not validly executed by Rachhpal Singh in favour of the defendants. It was the result of misrepresentation, fraud and active participation by the donee in the execution of the gift deed.

4. Aggrieved by the Judgment of the trial Court, the defendants challenged the same in appeal before the first Appellate Court. During the pendency of the appeal, the defendants moved an application for amendment of the written statement to incorporate the plea that Rachhpal Singh son of Alam Singh had also executed a registered will in favour of Balwant Singh and Gurcharan Singh. Even if the gift is not proved Balwant Singh and Gurcharan Singh will succeed to the property of Rachhpal Singh under the will. Another application was also moved for amendment of the written statement to incorporate the plea that Gurcharan Singh defendant is the nearest collateral of Rachhpal Singh deceased and as such he inherited the estate of Rachhpal Singh being his nearest heir. These applications were contested by the plaintiffs inter-alia on the ground that when the written statement was filed the alternative plea that even if the gift is not proved, defendant Gurcharan Singh will succeed on the strength of the will or that he was the nearest collateral of the deceased was not taken. The suit remained pending in the trial court for more than three year but no step was taken to amend the written statement. It was further stated that the alleged will was executed in favour of Balwant Singh and he admitted that the same had been cancelled. The appellate court allowed the amendment. The learned counsel for the petitioners submits that the amendment ought not to have been allowed in appeal and that the reasons ought to have been stated in the application for amendment for not making the prayer before the trial court. In support of his submission, he relied upon *Ranjit Kaur v. Ajaib Singh* (1984)86 P.L.R. 608, [Darshan Lal and others Vs. Comrade Daya Singh and others](#), I am not impressed with the submission made by the learned counsel. Even if the Appellate Court has committed error of law in passing the impugned order it cannot be said that it has failed to exercise jurisdiction which legally vested in it by law or has refused to exercise jurisdiction which vested in it by law or that it has acted illegally with material irregularity in the exercise of jurisdiction. Even if it has passed a wrong order, it will not be open to challenge in revision. The trial court has the jurisdiction to pass the order and there is no jurisdictional error. Even otherwise the correctness of the plea sought to be raised by amendment of the pleadings cannot be examined at the stage when the amendment is prayed for. The correctness of the plea will be judged on evidence and if the plea is found to be false, the court is well within its right to award compensatory costs against the party who had tried to set up the false plea.

5. The amendment in the written statement infact will avoid multiplicity of judicial proceedings. The dispute regarding title to the estate of Rachhpal Singh will be settled for all times to come. The Court will decide whether the deceased had

executed any gift deed or will in favour of the donees or the legatees as alleged or that Gurcharan Singh defendant was the only legal heir of the deceased being his nearest collateral.

6. For the reasons aforesaid, there is no merit in the revision petition. The same is dismissed.