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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-169-2025 (O&M)
Date of decision:22.01.2025

Kamaljit Kaur

... Petitioner

Vs.

Kartar Singh & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Dr. Rau P.S. Girwar, Advocate,
Ms. A.A.P. Rau, Advocate and
Ms. K.T. Rau, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed for setting aside order dated 30.08.2024 passed by learned Additional Civil Judge, Sr. Division, Bathinda, whereby application under Order 6 Rule 17 CPC read with Section 151 CPC filed by the applicant/defendant No.1 was allowed with costs.

2. Brief facts material for adjudication of the present revision petition are that the plaintiff/petitioner filed suit for declaration with the averments that she inherited the suit land owned by her father on the basis of unregistered Will dated 19.01.1967. Mutation No.567 was also sanctioned in her favour on 26.02.1967 and she is owner in possession of the land left behind by her father Avtar Singh @ Uttar Singh.

3. On notice of the suit, defendant No.1 filed written statement accepting the version of inheritance of estate of her father by the plaintiff as



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alleged in the plaint. However, defendant denied the allegations regarding forgery in the challenged record. It was alleged that infact plaintiff voluntarily and with her free will, had appointed her mother Bhagwant Kaur as her general attorney and Bhagwant Kaur had sold some property as general power of attorney holder of the plaintiff with knowledge and consent of the plaintiff. It was also alleged that plaintiff never remained in possession of any portion of the suit property. It was alleged that gift deeds and exchange deeds mentioned in the plaint were executed or made with the knowledge and consent of the plaintiff and she was well aware of the above said transactions from the very beginning but inspite of that, she kept mum for years together.

4. As per pleadings of the parties issues were framed and case was fixed for plaintiff's evidence. Some witnesses of the plaintiff had already been recorded when application under Order 6 Rule 17 CPC for amendment of the written statement was filed by defendant No.1, alleging that applicant/defendant was minor at the time of death of their father. During Cross examination of PW5/plaintiff, certain facts were disclosed which were earlier not in knowledge of applicant/defendant No.1 from which it transpired that Avtar Singh @ Uttar Singh was not in a position to execute the Will at the time of his death, therefore, the Will in question is forged and fabricated. It was alleged that the applicant under the bonafide belief admitted the legality of the Will but now he wants to amend the written statement while incorporating the true facts. It was alleged that defendant now wants to plead that the propounded Will is fabricated and manipulated.

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Suit land devolved upon Avtar Singh @ Uttar Singh from his forefathers by way of inheritance. Father of defendant suffered from brain hemorrhage at the time of his death and was not in a condition to execute the Will. Bhagwant Kaur and other heirs appear to have colluded and connived with the plaintiff in order to perpetrate fraud and deprive the defendant of his valuable right of inheritance. By way of amendment, defendant now wants to plead that the plaintiff alienated properties more than her actual share in the estate of her father. The Power of Attorney was obtained by defendant bonafidely in ignorance of actual position. Plaintiff disclosed true facts only at the time of her cross-examination and earlier defendant could not be in knowledge of the said facts despite due diligence. So delay in applying for amendment of the pleadings deserves to be ignored. It was alleged that amendment sought by the defendant is necessary for determining the real controversy between the parties as plaintiff had concealed the real facts and prayed that written statement may be allowed to be amended as per the details given in the application moved under Order 6 Rule 17 CPC for amendment of written statement of defendant No.1.

5. In reply to the said application, plaintiff took the legal objection that the suit was filed in the year 2014 and defendant No.1 appeared and filed written statement in June, 2014. The issues were framed in the year 2018. The application seeking amendment in the written statement has been filed when plaintiff has completed the oral evidence and only documents are to be tendered into evidence. It was alleged that at this stage defendant wants to withdraw the admission of facts already made by him in the written



statement which is not permissible. He cannot be allowed to approbate and reprobate. Defendant No.1 wants to introduce new facts and same is time barred. Valuable right which already accrued to the plaintiff cannot be allowed to be taken away under the garb of the said application. It was also alleged that plaintiff was depressed and afraid at the time of her cross-examination. She has no personal and actual knowledge about the health of her father at the time of his death and she gave answers in the cross-examination only on the basis of hearsay facts. Now she has come to know that her father did not suffer from brain hemorrhage prior to his death. Mother of the parties never opted to challenge the Will and mutation even though she remained alive for 30 years since the date of death of the father of the parties. Defendant had been cultivating the suit land for and on behalf of the plaintiff, admitting her to be exclusive owner of the property. It was alleged that amendment if allowed would make out a new case causing prejudice to the rights of the plaintiff and it was prayed that the said application be dismissed.

6. After hearing learned counsel for the parties, learned trial Court has allowed the said application vide order dated 30.08.2024. Aggrieved against the said order, petitioner/plaintiff has knocked the doors of this Court by way of filing the present revision petition.

7. Learned counsel for the revision petitioner has contended that the impugned order is totally illegal and amendment in written statement cannot be permitted after 10 years, after examination of five witnesses of the plaintiff. While relying upon judgments of Hon'ble Supreme Court of India



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in **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons & others, 2010(1) RCR (Civil) 27** and **Vidyabai & others Vs. Padmalatha & another, 2009(1) RCR (Civil) 763**, he has submitted that amendment can be sought in pleadings after commencement of trial but it must be demonstrated that despite exercising due diligence the parties could not have raised the matter earlier. He has argued that learned trial Court has erroneously granted amendment in written statement after commencement of the trial, particularly after significant lapse of 10 years after filing of the earlier written statement on 29.06.2015 and after examination of number of witnesses by the plaintiff. This fact has been ignored that this amendment leads to automatic withdrawal of admission of defendant No.1 made in the earlier written statement. He has prayed that this revision petition may be allowed and the impugned order be set aside.

8. Law is well settled that that the amendment in the written statement generally is not to be allowed after the commencement of the trial and no such amendment can be allowed which leads to withdrawal of any admission earlier made by any party in the pleadings. At the same time, the basic test which governs the Court's discretion in grant or refusal in amendment is that whether such amendment is necessary for the determination of real question in controversy. A beneficial reference can be made to decision of Apex Court rendered in the case of **Revajeetu (supra)**, wherein it was held that the first condition which must be satisfied before the amendment can be allowed by the Court, is that whether such amendment is necessary for determination of the real question in controversy. If that



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condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Courts' discretion in grant or refusal of the amendment. It was also observed that the other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any Court grants actual costs to the opposite side. While explaining law of amendment of pleadings, it has been held as following:

“19. The respondents also submitted that the appellant cannot now seek recovery of possession of the property. To grant amendment at this stage would not only have the effect of appellant getting rid of the admissions made in the original plaint but defeating the provisions of [Order XII Rule 6 of the CPC](#) by changing the cause of action and entire character of the suit and causing serious prejudice to the respondents. The respondents relied on the decision of this court in [Usha Balashaheb Swami & Others v. Kiran Appaso Swami & Others](#) wherein the court has held that by way of amendment, admission made in pleadings and particularly in the plaint cannot be sought to be omitted or got rid of. The Court further observed that a prayer for amendment of the plaint stand on different footing. The relevant observations of the Court are set out as under:

“19. ...a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different



footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as a question of prejudice would be far less in the former than in the latter case.....”

9. Now adverting to the present case, it is the admitted fact that Avtar Singh @ Uttar Singh father of the plaintiff and applicant/defendant No.1 was owner of the suit property. As per plaintiff, Avtar Singh @ Uttar Singh had executed a legal and valid unregistered Will at the time of his death in favour of plaintiff, on the basis of which entire property owned by father of the parties was bequeathed in favour of the plaintiff. Again it is the admitted fact that Avtar Singh @ Uttar Singh died on 20.01.1967. Aforesaid Will was allegedly executed by him one day prior to his death.

10. The present application for amendment of written statement has



been filed on the ground that some facts came to knowledge of defendant No.1 only during cross-examination of the plaintiff. Earlier applicant was not aware about the same as he was minor at the time of death of his father and he was under the belief that the Will had indeed been executed by his father in favour of the plaintiff and on this false belief, he had admitted legality of the same and the mutation was sanctioned in favour of the plaintiff. Again on this false belief only, he had admitted the same in earlier written statement filed by him, but when plaintiff in her cross-examination stated that Avtar Singh @ Uttar Singh before his death suffered from brain hemorrhage and remained in coma for 2-3 days prior to his death, then the applicant became aware about true state of affairs existing at the time of death of his father that he could not have executed the alleged Will in a sound disposing state of mind.

11. Learned trial Court has rightly held that merit of the amendment of the case, is not to be looked into at this stage. The fact, if the challenge to the mutation or to the Will, is barred by limitation or not, is a mixed question of law and fact, which cannot be gone into at this stage. It has further been rightly held that a party can be allowed to explain admission already made in the litigation and explanation has been given by the defendant in this regard that said admission in the earlier written statement was under misconception, when the true facts came to the knowledge of defendant No.1 after cross-examination of plaintiff, he promptly moved the present application for amendment of written statement. It has also been rightly observed by the trial Court that a party cannot be allowed to lead



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evidence which is beyond pleadings. So in the instant case, if the application for amendment is not allowed the defendant will lose the right to challenge the Will in question. It has also been alleged by the defendant that he was minor at the time of death of his father. Change in the stand of the defendant has been duly explained that it was on account of cross-examination of plaintiff about the medical condition of his father soon before his death. The amendment appears to be necessary for just adjudication of the controversy between the parties. As already observed, any amendment which is necessary for the just adjudication of the trial can be allowed at any stage of the proceedings. It is also not likely to cause any prejudice to the plaintiff as plaintiff still has the opportunity to prove her case by leading cogent evidence in this regard and her evidence is yet to be concluded. Trial Court has thus rightly held that defendant is rightly entitled to seek amendment in the written statement.

12. In the light of the above, it is held that the impugned order is well reasoned order and does not suffer from any illegality or perversity.

13. Dismissed.

14. Pending application(s), if any, also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

22.01.2025

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |