



212-A

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

CR-1763-2024

Date of decision: 04.09.2025

Vishal and others

...Petitioners

Versus

Sunita and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashok Tyagi, Advocate and
Mr. Saurav Tyagi, Advocate for the petitioners.

Mr. Lajpat Rai Sharma, Advocate for respondent No.1.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 04.03.2024 (Annexure P-5) passed by the Civil Judge (Junior Division) Ganaur, Sonapat, vide which an application under Order 6 Rule 17 of CPC (Annexure P-3) filed by the petitioners/defendants for amendment in the written statement has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

2. Learned counsel for the petitioners has submitted that in the present case, the suit was filed by respondent No.1-Sunita on 21.08.2018 on the plea that her father-in-law was the owner of the property and she had a registered Will dated 10.01.1997 in her favour. It is submitted that the written statement was filed in the said case and in the said written statement, inadvertently, the petitioners did not take the plea that the suit property was



ancestral coparcenary property and the fact that the father-in-law of respondent No.1 was the owner, was not disputed. It is submitted that when the evidence of the defendants had started, the petitioners, after seeing the relevant records, found that the property in question was ancestral coparcenary property and accordingly, moved an application for amendment with the prayer to take the said plea in the written statement. It is submitted that the said application had been dismissed vide impugned order dated 04.03.2024, which order, deserves to be set aside, inasmuch as, the said plea is only an additional plea which is sought to be taken in the written statement and the Court should be liberal in allowing the amendment in the written statement. It is thus, prayed that the present revision petition be allowed and the impugned order be set aside and the application filed under Order 6 Rule 17 CPC be allowed.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1:-

3. Learned counsel for respondent No.1, on the other hand, has opposed the present revision petition and has submitted that in the present case, the issues were framed on 05.11.2019 and the plaintiff had examined all the witnesses who had also been cross-examined by the defendants and thereafter, plaintiff's evidence was closed on 07.11.2022 and the case was fixed for evidence of the defendants and the defendants availed four opportunities but they did not lead any evidence and ultimately on 11.01.2023, the petitioners along with defendant No.1 had filed the application under Order 6 Rule 17 CPC for amendment of the pleading. It is submitted that in the present application for amendment, it had been stated that it was on account of inadvertence that the plea could not be taken and



thus, it is submitted that there was no due diligence in filing the application for amendment. It is further submitted that the present suit was filed in the year 2018 and the petitioners are purposely trying to delay the proceedings as the present suit is a suit for possession. It is argued that in the application for amendment filed under Order 6 Rule 17 CPC, the paragraphs which the petitioners wish to incorporate have not been mentioned and even the plea of the suit property being ancestral coparcenary property has only been taken for the sake of it, as in the said application even the name of the common ancestor, four generations from whom the property has allegedly devolved have not been mentioned. It is submitted that the present application had been moved only to nullify the evidence led by the plaintiff who has been able to prima facie prove the registered Will dated 10.01.1997. In support of his arguments, learned counsel for respondent No.1 has relied upon ***judgment dated 10.03.2025*** passed by this Court in ***CR-1423-2025 titled as "Bir Singh Vs. Sohan Singh and others"***.

ANALYSIS AND FINDINGS:-

4. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

5. It is not in dispute that respondent No.1-Sunita had filed a suit for possession by way of declaration with consequential relief of permanent injunction in the year 2018. The plaint dated 21.08.2018 has been annexed as Annexure P-1 with the paper book. In para 1(a) of the plaint, it was the case



of respondent No.1 that her father-in-law used to be owner in possession of the suit property. Paras 1(a) and 1(b) of the said plaint are reproduced hereinbelow:-

“1.(a) That father in law of the plaintiff used to be owner in possession in the agriculture land to the extent of his 1/6 share comprised in khewat no.59/188 khata no’s.123, 124 rect and killa No’S

557	558

/	/
6-15	3-17

Total measuring 10-12 Marla situated within the revenue estate of village Ganaur, Tehsil Ganaur, District Sonapat. Jamabandi for the year 1995-1996, 2000-2001, 2005-2006 and 2015-2016 are attached with the plaint.

1.(b) That father in law of the plaintiff used to be owner in possession in the agriculture land to the extent of his 6 kanal share comprised in khewat no.49/178 min, khata no.111, rect and killa No's 60//4/2 (6-0), total measuring 6 kanal situated within the revenue estate of village Ganaur, Tehsil Ganaur, District Sonapat. Jamabandi for the year 1995-1996, 2000-2001, 2005-2006 and 2015-2016 are attached with the plaint.

1. (c) That father in law of the plaintiff used to be owner in possession in the agriculture land to the extent of his 16 Marla share comprised in khewat no.53/180 min khata no.115 rect and killa No'S 37//7/1/1 (0-19), total measuring 0-19 Marla situated within the revenue estate of village Ganaur, Tehsil Ganaur, District Sonapat. Jamabandi for the year 1995-1996, 2000-2001, 2005-2006, 2010-2011 and 2015-2016 are attached with the plaint”

6. It is not in dispute that written statement on behalf of the petitioners as well as respondent No.2 was filed and the factum that father-in-



law of the plaintiff was owner of the suit property was not disputed. Para 1 of the written statement on merits is reproduced hereinbelow:-

“1. That para no.1 a, b & c of the plaint are matter of record, needs no reply. But plaintiff has strict proof to prove the same by cogent evidence.”

7. The issues in the present case were framed on 05.11.2019. The plaintiff had examined all the witnesses and had closed her evidence on 07.11.2022 and the case was fixed for evidence of the defendants and the defendants availed four opportunities but they did not lead any evidence and ultimately on 11.01.2023, the petitioners along with defendant No.1 had filed the application under Order 6 Rule 17 CPC for amendment of the pleading. It is the case of the plaintiff-respondent No.1 that there was registered Will dated 10.01.1997 executed by her father-in-law in her favour and she had led her entire evidence to prove the said registered Will. In the application under Order 6 Rule 17 CPC (Annexure P-3), the reason given for taking the said plea after commencement of the trial was that of “inadvertence”. The said plea is destructive to the plea of due diligence, which is a requirement under the proviso of Order 6 Rule 17 CPC for the amendment to be allowed.

8. This Court in the case of **Bir Singh** (Supra) has held as under:-

“6. Proviso to Order 6 Rule 17 CPC has been incorporated on 01.07.2002 and the said provision reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:



Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

A perusal of the above provision would show that it has been specifically mentioned in the proviso that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before commencement of the trial.

7. The Hon’ble Supreme Court in the case of Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others, reported as 2006(12) SCC 1, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended), the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.”

9. Thus, the trial Court had rightly dismissed the application filed under Order 6 Rule 17 CPC by the petitioners on the ground of there being no due diligence. In the impugned order dated 04.03.2024, the trial Court had also observed that the petitioners even in the proposed pleadings had not clarified as to how the property came to the hands of father-in-law of the plaintiff and had not pleaded the lineage of the four ancestors from whom the property had been inherited so as to set up the plea of ancestral coparcenary property. Additionally, it would be relevant to note that a perusal of the application (Annexure P-3) would show that in the said application, it has not been specifically mentioned as to where the paras are to be incorporated in



the original written statement nor there is any detail given as to whether any para is to be deleted. Further neither the name of the common ancestor nor name of any of the person from whom the property has devolved to the father-in-law so as to show that the property in the hands of father-in-law was ancestral coparcenary property has been given. Apparently, the said application had been moved after the entire evidence had been led by the plaintiff to prove the registered Will, which as per the case of the plaintiff was executed in her favour by her father-in-law.

10. In case, the present application for amendment is allowed, then, it would cause irreparable loss to respondent No.1-plaintiff who had filed the suit for possession in the year 2018. On a pointed query raised by this Court, learned counsel for the petitioners has very fairly submitted that no issue with respect to the property being ancestral coparcenary property has been framed and the witnesses of the plaintiff have already been examined and allowing the said application would thus, result in de novo trial which would result in endless delay in the proceedings. The plaintiff has led evidence on the pleadings that her father-in-law was owner of the suit property and thus, the plea now sought to be raised by the petitioners-defendants would completely change the nature of the case. At any rate, since the application for amendment has been filed after the trial has commenced and there is no due diligence in filing the same, thus, the impugned order passed by the trial Court dismissing the said application is in accordance with law and deserves to be upheld.

11. 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.

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

04.09.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No