



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
129 **CR-22-2025 (O&M)**
Date of decision: 13.01.2025

Smt. Surinder Kaur

...Petitioner(s)

Vs.

Sh. Jaswant Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Harish Goyal, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India is filed by the plaintiff seeking setting aside of the order dated 07.12.2024 (Annexure P1) passed by the learned Civil Judge, Junior Division, Kharar in Civil Suit No.CS-341-2019, whereby the application under Order 6 Rule 17 CPC for amendment of the plaint, was dismissed; and to allow the application for amendment of the plaint, in the interest of justice.

2. Learned counsel for the petitioner/plaintiff submits that the petitioner/plaintiff and the respondent/defendant are children/legal heirs of deceased Dayal Singh who had expired on 21.08.2015. After his death, the respondent forged and fabricated a Will of Dayal Singh dated 25.01.2015 and Affidavit dated 01.09.2015. Aggrieved of the said fraud and the manipulated Will made by the respondent, the petitioner filed suit for declaration that she is entitled to half share in estate of her father Dayal Singh. However, at the time of



filing the said suit, the petitioner was under great mental stress and therefore, could not disclose that Dayal Singh had suffered a paralysis attack. It is submitted that due to this immense stress, the petitioner could not mention the other land situated in the village. As such, the petitioner filed the present application under Order 6 Rule 17 CPC seeking amendment of the plaint (Annexure P2). However, vide the impugned order, the same has been dismissed.

3. Learned counsel for the petitioner submits that the respondent had also presented one forged Affidavit dated 01.09.2015 before the learned Court below alleged to have been executed just 10 days after the death of the father of the petitioner. The defendant had also purchased one land in village Harpalpur, Hadbast No.116, Tehsil Ghanaur, Patiala which has been purchased by the defendant after selling the ancestral land situated in Village Bhukri, Tehsil Kharar, District SAS Nagar, Mohali. It is contended that since the defendant is entitled to equal share in the property of his father and the aforesaid property is bought after selling the ancestral property, therefore, the petitioner is entitled to joint possession of the abovesaid land also. It is submitted that accordingly in order to include these technical facts in the plaint, the petitioner had moved the application for amendment of plaint, as it was necessary to amend the plaint for proper and just decision of the case. It is further submitted that the said amendments would have no impact on the nature of the suit. However, these facts have not been appreciated by



the learned trial Court while passing the impugned order. The learned trial Court failed to appreciate that in making the said amendments, the nature of the suit would remain unchanged. First of all the petitioner by way of amendment sought to include the fact that affidavit dated 1/09/2015 is forged and fabricated document. This document will not change the nature of the case. Already dispute regarding forgery of Will is in issue. So, regarding additional relief regarding forgery of Affidavit will not change the nature and substance of suit at all. Moreover, this document was not in the knowledge of the plaintiff, at the time of filing of the suit. Further by way of amendment, plaintiff wanted to incorporate some more land, being ancestral, since the same was also purchased, by selling the ancestral land at Tehsil Ghanur. So, the same will also not changed the nature of the suit. So, all these amendments, will not change the nature of the suit, rather will reduce the multiplying of the litigation. The said fact was again not in knowledge of the petitioner. Further due to mental stress, the suit could not be filed properly and the petitioner could not instruct her counsel properly. It is accordingly prayed that the instant petition be allowed, and the impugned order be set aside in the interest of justice for proper adjudication of the matter.

4. No other argument is raised on behalf of the petitioner.
5. I have heard learned counsel for the petitioner and perused the case file in great detail.



6. The Present suit was filed by the petitioner/plaintiff on 22.05.2019 seeking declaration to the effect that the petitioner/plaintiff was entitled to half share in the estate of her father as described in the headnote of the plaint; and for declaration to the effect that Will dated 25.01.2015 is forged and fabricated; and mutation of inheritance of deceased Dayal Singh sanctioned on basis of the abovesaid Will in favour of defendant is illegal, null and void having no effect on the rights of the plaintiff, with consequential relief of joint possession and for permanent injunction restraining the defendant from alienating the suit property. Thereafter, the present application under Order 6 Rule 17 CPC (Annexure P2) was filed by the petitioner on 24.09.2024 seeking amendment of the above said plaint.

7. Order 6 Rule 17 CPC 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.”

8. Bare reading of the above-said provision shows that it is very categorically stipulated therein that *“...no application for amendment shall be allowed after the trial is 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.” Admittedly, issues in the present case were framed by the learned trial Court in November 2023; whereas the present application under Order 6 Rule 17 CPC (Annexure P2) for amendment has been filed by the petitioner on 24.09.2024 i.e. *after* trial had commenced - which is not permitted as per law.

9. Furthermore, by way of the amendment, the petitioner has sought to lay challenge to the Affidavit dated 01.09.2015. However, a perusal of the application (Annexure P2) under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint, of both, the pleadings and prayer clause; shows that the said Affidavit has now here been mentioned in the said application for amendment of plaint. This fact is also admitted by learned counsel for the petitioner.

10. By way of the amendment, the petitioner further wishes to incorporate challenge to some more land. The only reason given by the petitioner for failing to incorporate the said amendments originally in the plaint is that at the time of filing of the suit, the petitioner was under great stress due to paralysis attack of her father, and that the said facts were not in her knowledge. However, ‘mental stress’ does not constitute a ground on the basis of which amendment of plaint can be permitted illegally after commencement of trial. The proviso is categorical in this stipulation/enunciation that no application for amendment shall be allowed after trial.



11. It is also relevant to note that in her cross-examination on 09.08.2024, the petitioner has clearly stated that *“I do not know when the attack of paralysis took place. I do not know whether paralysis took place before 4 to 5 days earlier to death nor I enquired this fact from my brother. I did not tell my counsel about the fact of paralysis attack of my father as the counsel did not ask me. I did not talk to my father till his death nor he asked me anything about the will. The record of treatment is with my brother. I do not remember when my brother got the treatment of my father.”* The application of the petitioner does not even disclose the dates or the period during which she remained under mental stress. Even no medical evidence has been produced by the petitioner to support the said contention.

12. Further, amendment to plaint after commencement of trial is envisaged only if it is shown on record that despite exercise of due diligence, the said facts were not in the knowledge of the applicant. However, it has been observed in the impugned order that: –

“11. It is also pertinent to mention here that on 04.11.2023, on addressing arguments by both the parties of the case the stay application was decided. The plaintiff could have bring on record proposed facts which is intended to be incorporated now, but no efforts has been made by the plaintiff at the time of to incorporate the proposed facts.”

13. Though it has been contended by learned counsel for the petitioner that the petitioner did not have knowledge of the Affidavit dated 01.09.2015; or the land that is now sought to be incorporated in the



plaint. However, there is nothing whatsoever on record to reveal or indicate as to the manner in which the petitioner now gained knowledge regarding the said facts. In any event, the said contention of the petitioner is belied by the fact that the petitioner wants to incorporate material regarding which she had already deposed in her cross-examination. Clearly therefore, the said facts were in the knowledge of the petitioner and could have been brought on record before the learned trial Court prior to commencement of trial. However, the petitioner failed to exercise due diligence. For this reason as well, the amendment cannot be permitted.

14. In view of the above, no ground is made out that calls for interference in the impugned order. The petitioner is only trying to cover lacunae in the case which cannot be permitted as she has omitted to plead regarding facts and document. This falls in the field of the evidence to be led and therefore, does not call for interference of this Court.

15. The present petition is **dismissed**.

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

13.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No