

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-121-2015

Date of decision: 22.09.2015

Chandbir Singh

..... Petitioner

Versus

Sanjiv Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

PRESENT: Mr. YS Turka, Advocate for the petitioner.

Mr. MK Singla, Advocate for respondents No. 1 and 2.

AMIT RAWAL, J. (ORAL)

Challenge in the present petition is to the order dated 04.10.2014 (Annexure P-4), whereby application dated 25.07.2014 (Annexure P-2) filed by the petitioner-plaintiff under Order VI Rule 17 read with Section 151 CPC to incorporate the relief of restoration of possession, by way of amendment in the suit, filed for declaration challenging the judgment and decree dated 15.06.2004 passed in Civil Suit No. 296 dated 17.08.2001, was declined.

Mr. YS Turka, learned counsel appearing for petitioner-plaintiff submits that the petitioner had been dispossessed from the suit land during the pendency of present suit on 26.05.2010 whereas the suit was filed on 18.08.2009, therefore, it had become inevitable to seek amendment. It is further submitted that the trial Court has, thus, committed illegality and perversity in declining the application.

Mr. MK Singla, learned counsel appearing for respondents

No. 1 and 2 submits that against the judgment and decree dated 15.06.2004, an appeal was preferred by the petitioner which was dismissed vide judgment and decree dated 16.04.2008 and the same had attained finality up to this Court. It was only thereafter, the suit, aforementioned, has been filed. It is further submitted that the possession has been taken in due course of law by filing the appropriate application. The petitioner had not sought any interim stay during the pendency of present suit. The application for amendment is belated inasmuch as it was filed on 25.07.2014 whereas the possession was taken on 26.05.2010.

I have heard learned counsel for the parties and appraised the paper book.

On perusal of *zimni* orders produced by Mr. MK Singla, learned counsel appearing for respondents No. 1 and 2, it is evident that the petitioner had taken about 5 opportunities to conclude his evidence. Once the dispossession was in the notice of petitioner, no explanation has come forth seeking the amendment, after a gap of about 05 years. Moreover, perusal of the contents of application shows that essential requirement of law, much less, use of expression “*despite exercise of due diligence*” is conspicuously wanting/absent.

There is no illegality, much less, perversity in the impugned order and the same cannot be said to be passed without jurisdiction, thus, the impugned order is upheld as the instant revision petition is devoid of merits. Accordingly, the same is dismissed

September 22, 2015
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(AMIT RAWAL)
JUDGE