

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

CR No. 1828 of 2014 (O&M)

Date of decision: 18.09.2015

Heera Lal

... Petitioner

versus

Guggan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. N.D. Achint, Advocate for the petitioner.

Mr. A.P. Bhandari, Advocate for respondent No.2.

K.Kannan, J.

The revision is against the rejection of an application for amendment of the plaint brought to a suit challenging a release deed as invalid. There is an averment in the plaint that the properties are ancestral and it would appear that the trial has commenced with the filing of proof of the affidavit of the plaintiff. The plaintiff brought an amendment to contend that even if it was not ancestral the release deed is still not valid for the reasons already stated in the plaint. This has been rejected as resulting in inconsistent plea as having been brought by the plaintiff and hence incompetent.

I asked the counsel for the respondent as to how such an innocuous prayer could be rejected. The counsel refers me to a judgment of the SC in Vidhyabai and others Vs. Padmalatha and another., 2009 (2) SCC 409, to say that in terms of the amended provisions of CPC, the amendment could not be ordered after the commencement of the trial except when in spite of due diligence a particular fact was not known. This is not a case of a plaintiff not having known a particular situation and bringing a new fact. On the other hand, it is a statement of law which the plaintiff is trying to make that if the source title is not seen to be ancestral, the case cannot still fail by the original pleadings but it should be supported by the fact that the release is invalid for the other reasons stated in the plaint already. There is no likelihood of any surprise of the

trial nor any new prejudice.

The objection taken at the trial was itself unfortunate and the persistence at this Court before me is equally so.

The order is set aside and the revision petition is allowed with above observations.

(K.KANNAN)
JUDGE

18.09.2015

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