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

CR No.2729 of 2014

Date of decision: June 30, 2015

Pravesh Promoters Private Limited

.....Petitioner

Versus

Lal Singh alias Pritam Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate
for the petitioner.

Mr. Avnish Garg, Advocate
for respondent Nos.2 to 4.

SABINA, J

Petitioner has filed this petition challenging the order dated 01.03.2014, whereby application moved by the petitioner for permission to amend the plaint, was dismissed.

Learned Senior Counsel for the petitioner has submitted that Piara Singh had executed an agreement to sell qua land in question in favour of the petitioner on 03.02.2012 (Annexure P-2). As per the agreement to sell, the sale-deed was to be executed on or before 23.12.2012. Piara Singh died on 12.02.2012. Petitioner had filed suit for permanent injunction against the legal heirs of Piara Singh. In the said suit, defendants were restrained from alienating the suit property during the pendency of the suit. Later, an application was moved by the petitioner seeking amendment of the plaint. By way of amendment, petitioner wanted to seek the relief of

specific performance of agreement to sell dated 03.02.2012 as the defendants had failed to execute sale-deed on or before the date fixed for the execution of the sale-deed as per the agreement to sell in question.

Learned counsel for the respondent, on the other hand has opposed the petition and has submitted that the amendment sought by the petitioner would change the nature of the suit. Petitioner could not introduce a new cause of action by amending the suit.

In the present case, Piara Singh had executed an agreement to sell (Annexure P-2) qua the land in question in favour of the petitioner on 03.02.2012. A perusal of Annexure P-2 reveals that parties had agreed that the sale-deed would be executed on or before 23.12.2012. Piara Singh died on 12.02.2012. Petitioner filed suit for permanent injunction against the legal heirs of Piara Singh on 13.03.2012. At the time of filing of the civil suit, petitioner could not have claimed the relief by specific performance of agreement in question as the date fixed for execution of the sale-deed was 23.12.2012. The legal heirs of Piara Singh failed to execute the sale-deed on or before 23.12.2012. In this situation, petitioner moved an application (Annexure P-13) under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) seeking amendment of the plaint. By way of amendment, petitioner wanted to claim the relief of specific performance of agreement to sell dated 03.02.2012 (Annexure P-2). Trial Court erred in dismissing the

application moved by the petitioner seeking amendment of the plaint vide the impugned order on the ground that by way of amendment, petitioner wanted to introduce a new cause of action, which had arisen to him during the pendency of the suit. Rather the application moved by the petitioner should have been allowed by the trial Court to avoid multiplicity of suits. The relief sought by the petitioner had arisen during the pendency of the suit and the petitioner was liable to be allowed to incorporate the relief by way of amendment, which had accrued during the pendency of the suit. Petitioner could not have sought the relief of specific performance of agreement to sell till the date fixed for execution of the sale-deed had not expired. It is only after the legal heirs of Piara Singh had failed to execute the sale-deed on or before the date fixed between the parties that, the cause of action had arisen to the petitioner for seeking the relief of specific performance of agreement to sell dated 03.02.2012 (Annexure P-2).

Accordingly, this petition is allowed. Impugned order dated 01.03.2014 is set aside. Consequently, application (Annexure P-13) moved by the petitioner under Order 6 Rule 17 CPC, is allowed.

**(SABINA)
JUDGE**

June 30, 2015
mahavir