

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

Civil Revision No.3166 of 2014

Date of decision:27.05.2015

Pargat Singh

... Petitioner

versus

Baljit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. P.P.S. Thethi, Advocate,
for the petitioner.

Mr. Prateek Mahajan, Advocate,
for the respondents.

K.Kannan, J. (Oral)

1. The petitioner is the defendant who brought an amendment in a suit for partition after a remand was made by the appellate court. The suit was for partition and separate possession of specific portions of buildings of a property stated to be on a joint piece of land. It is admitted between parties that the partition proceedings are pending in the admitted joint properties before Revenue Authorities. There is an issue framed on a plea made by the defendant that the plaintiff had given up his share to the buildings by receiving some cash consideration. The burden of proof has been placed on the defendant for the plea made but since the trial court had not originally given the finding on the said issue, the appellate court had remanded the suit after the decree was passed by the

original court for a fresh consideration. At the stage of remand, the defendant has come with an application for amendment to plead that the building had been constructed by him and several other averments relating to the nature of property as defendant's own property in which the plaintiff cannot claim a share. After taking a plea that the plaintiff had received some cash consideration to give up the right, the defendant wants to bring a pleading that the building was constructed by him. According to the counsel, there is already evidence to that effect. If there was already evidence, the defendant will make his submissions on such evidence. It is questionable whether there could be any evidence *de hors* pleadings or contrary to the pleadings. The precept of law is that the evidence follows the pleadings and not vice-versa. It cannot, therefore, be even an argument that since there is evidence already, the defendant would bring written statement to conform to such evidence and there would be no necessity for any additional evidence. I give the defendant no such luxury by means of an amendment especially after the remand.

2. The application for amendment was rightly dismissed and I find no scope for interference. The revision petition is dismissed.

(K.KANNAN)
JUDGE

27.05.2015
sanjeev