

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 4758 of 2015

Date of Decision: 30.07.2015

Ajaib Singh and others

.....Petitioners

Vs.

Gurmit Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mohd. Yousaf, Advocate,
for the petitioners.

SABINA, J.

Petitioners have filed this petition challenging the order dated 01.07.2015, whereby application moved by the plaintiffs for permission to amend the plaint, was allowed.

Learned counsel for the petitioner has submitted that the plaintiffs had filed suit for declaration without claiming the relief of possession. In this regard, objection was taken by the defendants in the written statement that the suit for declaration was not maintainable without claiming the relief of possession. Despite the said objection, plaintiffs had failed to amend the plaint. Suit filed by the plaintiffs was dismissed by the trial Court on the ground that it was not maintainable. Thereafter, both the sides preferred appeals against the judgement/decree passed by the trial Court. The First Appellate Court dismissed the appeal filed by the plaintiffs and allowed the appeal filed by the defendants. Plaintiffs approached this

Court by way of regular second appeals and the said appeals were allowed by this Court on 17.08.2009. The matter was remanded to the First Appellate Court for afresh decision. Thereafter, plaintiffs moved an application before the First Appellate Court for permission to amend the plaint and the same was dismissed. The Appellate Court, vide order dated 07.03.2012, allowed the appeal and remanded the case to the trial Court for a fresh decision as issue No. 7-A had not been decided by the trial Court. Hence, at this stage, the application moved by the plaintiffs for permission to amend the plaint was liable to be dismissed.

In the present case, plaintiffs have filed suit for declaration challenging the sale deed dated 21.12.1993. Although, the plaintiffs were required to claim the relief of possession but they had failed to do so. Defendants had taken an objection in the written statement that the suit was not maintainable as the plaintiffs had failed to claim the relief of possession. Although, the plaintiffs had been negligent by not claiming the relief of possession but the fact remains that the suit of the plaintiffs for declaration was liable to fail as they had not sought the relief of possession. Since now the case is before the trial Court for a fresh decision, in the interest of justice, the plaintiffs were liable to be permitted to amend the plaint. Issue No. 7-A was framed by the trial Court and the same was ordered to be treated as preliminary issue but the trial Court had failed to decide the said issue. Due to this reason, the First Appellate Court has remanded the case to the trial Court for a fresh decision.

In the facts and circumstances of the present case, the

impugned order is just and fair and calls for no interference.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 30, 2015
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