

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

CR No. 5 of 2015 (O&M)

Date of decision : 10.3.2015

Jagjit Singh

.. Petitioner

versus

Bhagwant Singh and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. G. S. Sidhu, Advocate, for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 15.5.2014 (Annexure P-5) passed by the learned Court below whereby the application filed by the petitioner for amendment of the reply to the counter claim as well as replication filed in Civil Suit No. 310 of 26.4.2007 was dismissed.

Learned counsel for the petitioner submitted that in addition to the pleas already raised in the suit as well as to the counter claim filed by the defendant, the petitioner seeks to take the plea of adverse possession as an alternate. The learned Court below without appreciating the plea raised by the petitioner dismissed the application. Even if there was some delay, the other party could have been compensated with costs. The plea is quite relevant for the purpose of decision of lis between the parties.

After hearing learned counsel for the petitioner, I do not find any merit in the present petition.

The suit was filed by the petitioner for permanent injunction on 26.4.2007. The issues were framed on 19.9.2008. The evidence of the petitioner-plaintiff was concluded on 15.11.2010. The application for amendment was filed on 17.4.2012. Meaning thereby the trial had already begun and in fact was near conclusion. All the facts were in the knowledge of the petitioner-plaintiff when he filed the civil suit or reply to the counter claim. Nothing has been shown on record in support of the plea that despite

due diligence, the petitioner-plaintiff could not raise the plea, which is sought to be raised now, either when the plaint was filed or reply to the counter claim. Meaning thereby, the application now being filed for amendment of the reply to the counter claim as well as the replication, the effort is to fill in the lacuna. Even otherwise, the plea of declaration to be owner on the basis of adverse possession is not available to the petitioner-plaintiff. Reference can be made to judgments of Hon'ble the Supreme Court in Gurudwara Sahib vs Gram Panchayat Village Sirthala and another 2013 (4) R.C.R. (Civil) 703 and of this Court in RSA No. 2194 of 2013 Onkar Singh and others vs Balwinder Singh and others decided on 12.8.2014.

For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly dismissed.

10.3.2015
vs

(Rajesh Bindal)
Judge