

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5126 of 2014 (O&M)

Date of decision: 16.07.2015

Balwinder Singh and another

... Petitioners

versus

Nahar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Param Preet Singh Brar, Advocate for the petitioners.

Mr. Siddharth Gupta, Advocate for the respondents.

K.Kannan, J.

In a suit for title the defence was that he had obtained right to the property through an unregistered sale deed of the year 1966. After the commencement of the trial the defendant moved an application to amend the written statement to include the defence that he had prescribed title of the property by adverse possession. This was declined.

I find the order to be untenable. If there was a plea already that he was a full owner to the property through an unregistered *vahi* and there was a plea by him later that he has prescribed title of the property, I would take it to be a pure legal defence, as the character of possession is adverse that commences from an unregistered *vahi* entry. The statement of law is that Courts shall be liberal in construing the pleas for amendment of the written statement unless there was a very serious prejudice which can be caused by a defendant, such as withdrawing of an admission or bringing up a defence which would bring a surprise at the trial. The plaintiff certainly knew what the defence was, that the defendant was setting up his own assertion of right to property commencing from the year 1966 and if he was characterizing his own possession as adverse and sought to include the defense of adverse possession, I would take it to be an instance of a legal inference to a defense that shall

already brought and there was no surprise or prejudice for the plaintiff.

The impugned order is set aside and the civil revision petition is allowed with these observations.

(K.KANNAN)
JUDGE

16.07.2015

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