

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

Date of decision: 27.01.2015

Bhim Singh and another

.....Petitioners

v.

Virender Kumar

.....Respondent

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Robin Dutt, Advocate for the petitioners

Jaswant Singh,J.(Oral)

Plaintiffs are in revision aggrieved by the order dated 19.11.2014 passed by Civil Judge (Senior Division) Yamuna Nagar whereby their application for amendment of the plaint has been dismissed.

It is averred that an agreement to sell for shops/plots dated 22.12.2005 was entered into between the parties and since the defendant was subsequently found to be not true owner of the said plot, plaintiffs filed a suit on 18.9.2009 for recovery of Rs.5 lacs as earnest money alongwith interest. After the evidence of the plaintiffs was over and evidence of defendant had commenced an application was moved in September 2014 seeking an amendment of the plaint to include the relief for specific performance.

Having heard learned counsel for the plaintiff at length this Court is in full agreement with the reasoning adopted by the trial Court

to the effect that by filing of the suit with the stated pleadings plaintiffs had repudiated the agreement and therefore are not entitled to an amendment at that stage. It is apparent that not only such a relief would be barred by limitation it is also to be acknowledged that by filing of the suit the petitioners admittedly cannot be construed to be “ready and willing throughout” which is a necessary condition for grant of relief of specific performance.

In view of the above, present revision petition stands dismissed with costs of Rs.5000/- (Rupees five thousand only) to be deposited with District Legal Service Authority, Yamuna Nagar.

27.01.2015
joshi

(Jaswant Singh)
Judge