

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

Civil Revision No.6986 of 2012 (O&M)

Date of decision: 20.07.2015

Kamaljit Singh

... Petitioner

versus

Ram Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jitender S. Chahal, Advocate,
for the petitioner.

Mr. R.S. Mamli, Advocate,
for respondents 1 to 5.

K.Kannan, J. (*Oral*)

1. The defendant, who filed a counter claim seeking for recovery of possession, sought for an amendment at the conclusion of trial that there was no mortgage in the eye of law and if there was a mortgage, it should be redeemed. The trial court declined the relief. If the defendant want to incorporate a plea that if the mortgage is established and it is found that the money is still due, he would seek for a prayer for redemption of the same. The counsel for the respondents supports the order to contend that the mortgage itself was fraudulent and the defendant, who had never deposited any money for discharge or redeeming the mortgage, cannot be permitted to bring an amendment at a belated stage.

2. The issue of whether mortgage existed or not is admittedly a point for consideration. All that the defendant would want is to ask for a prayer for redemption along with recovery of possession which he has already asked. Unless the prayer itself is barred by law, I cannot find any tenable objection could be taken by the plaintiff. A right to possession of the owner seeking for recovery by a counter claim cannot be lost by absence of a specific prayer for redemption. If the amount was not deposited already, the issue of when the deposit will be made and the manner of such deposit is bound to be provided for before the passing of a final decree. I will not allow for additional evidence to be given by the defendant and the court will proceed to allow for the prayer to be brought with the right to file a reply which is in the nature of statement by the plaintiff and proceed to dispose of the case in accordance with law. Be it known that no additional evidence will be permitted to be given on the basis of the pleadings that are now permitted to be brought to delay the trial and disposal of the case. The impugned order is set aside and the revision petition is allowed to the above extent.

(K.KANNAN)
JUDGE

20.07.2015
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