

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

CR No.8408 of 2015

Date of Decision: December 10, 2015

Naresh Kumar

.... Petitioner

vs.

Mahinder Ram

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Munish Kumar Garg, Advocate for the petitioner.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 08.05.2015 passed by learned Addl. Civil Judge (Sr. Divn.), Tohana, vide which the application filed by the plaintiff-petitioner under Order VI, Rule 17 CPC for amendment of the plaint was dismissed.

Briefly stated, the plaintiff had filed a suit for permanent prohibitory and mandatory injunction for restraining the defendant from interfering in his peaceful possession over the suit land measuring 18 kanals, 8 marlas, situated at Village Roopwali, Tehsil Tohana, District Fatehabad. Further injunction was sought for restraining the defendant from alienating the suit land.

In the pleadings, it was pleaded that the plaintiff was mortgagee of the said land. It was further pleaded that the defendant

executed a registered agreement to sell dated 19.11.2010 bearing vasika No.2941 in favour of the plaintiff for the land measuring 16 kanals, 0 marla. It was further alleged that the defendant now wants to dispossess the plaintiff. The suit was contested by the opposite party and consequently went on trial and now stated to be fixed for arguments.

On 21.11.2014, an application for amendment of the plaint was filed in which it was simply stated that the suit for permanent injunction may be treated as suit for specific performance. The amended plaint was attached with the application.

The lower court dismissed the application on the seven ground, which are reproduced as under:

*“**Firstly**, the alleged agreement to sell is dated 19.11.2010 and the date of registration of the sale deed was fixed as 25.11.2011 whereas the present suit has been filed on 28.8.2012 on which date the cause of action had accrued in favour of plaintiff for filing the suit for specific performance of agreement to sell. However, rather than filing the same, the plaintiff had opted to file the present suit for permanent injunction. Hence, now he could not be allowed to fill up the lacuna in his case by way of filing the present application. **Secondly**, the present suit has been filed by the plaintiff on 28.8.2012. When the present application was filed by the plaintiff, the present case was fixed for the evidence of plaintiff with last opportunity. Thus, the present application has been filed by the*

*plaintiff at a very belated stage i.e. even after the commencement of trial. **Thirdly**, if the present application is allowed then it would amount to de-novo trial. **4thly**, the plaintiff by way of filing the present application for amendment in the plaint is going to change the nature of the suit which cannot be allowed. **5thly**, even there is no mention in the present application regarding the market value of the suit land and no court fee has been affixed on the same. **6thly**, no contents of the proposed amendment have been mentioned in the application which the plaintiff wants to amend. **7thly**, it has nowhere been alleged in the application that the plaintiff ever after due diligence could not bring the said fact before the notice of this court despite the fact that it was well within his knowledge at the time of filing of the present suit. Hence, the present application at this belated stage is not maintainable and is hereby dismissed.”*

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

It comes out that when the suit for permanent injunction was filed, the cause of action was there to file the suit for specific performance as the date of execution and registration of the sale deed was 25.11.2011 and the suit was filed on 28.08.2012. The suit was filed on the basis of mortgage deed as well as agreement. Therefore, by including the relief for specific performance, the same is deemed to have been abandoned. At the most, the plaintiff could

claim that the previous suit is on the basis of mortgage deed and he could file the fresh suit within limitation, which was not done.

In the plaint, there are averments that the plaintiff was ready and willing to perform his part of the contract. By way of amendment, the only prayer is that the suit may be treated as the suit for specific performance. In the absence of the pleadings so as to fulfill the requirements of the suit for specific performance, the suit will otherwise fail.

I also agree with the view of the lower court that if the amendment is allowed, it will result into de-novo trial. The nature of the suit will be changed. In the application, it is not mentioned at all as to which para is to be amended and what is to be added in the said para. The only prayer is that the suit may be treated as suit for specific performance, which cannot be done. The law of amendment of the plaint after the commencement of trial, is not liberal. The agreement was in favour of the plaintiff and the last date of the execution of the sale deed had expired even before the filing of the suit.

Therefore, there is lack of due diligence on the part of the plaintiff. Hence, the application for amendment of the plaint was rightly dismissed by the lower court. Thus, there is no ground to interfere in the impugned order.

Accordingly, the present revision petition stands dismissed.

December 10, 2015
sarita

(KULDIP SINGH)
JUDGE