

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1312 of 2016(O&M)
Date of Decision.11.04.2016

Krishan Kumar Kataria

.....Petitioner

Vs.

Raj Kumar and others

.....Respondents

Present: Mr. Shub Karman, Advocate for
Mr. Manoj Kaushik, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers 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?

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K. KANNAN J. (ORAL)

1. In a suit for partition, for declaration and for injunction, the plaintiff had moved an application for amendment to challenge some sale said to have been executed on 07.06.1981. This application for amendment came after five witnesses were examined on plea that he came to know the sale only when he was served with summons in a suit instituted by one Lado and Basanti. If there is registered document, registration of the document ought to be taken as constructive notice and the person cannot plead institution of the suit by a third party making reference to the sale as cause of action for challenging the same. Challenge to sale if it is void, it has to be done within a period of 12 years and if it is voidable, it has to be done within a period of 3 years. On both these counts, there cannot be amendment allowed to bring a challenge to the sale at this belated time. There is also a fetter

against amendment after the commencement of the trial unless the issue was such that in spite of due diligence, he could not have known this. Before he files a suit for partition, he ought to have applied for encumbrance in relation to all the properties and known about any transaction impinging on the properties covered through the suit. If he had not done so, he must be taken as having been guilty of negligence and the due diligence which Order 6 Rule 17 CPC states as exceptional situation for amendment, does not apply to this case.

2. The order already passed is maintained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

April 11, 2016
Pankaj