

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

C.R. No.2748 of 2016 (O&M)

Date of Decision.22.04.2016

Sudama son of Shri Phool Singh

.....Petitioner

Vs.

Balbir Singh and others

.....Respondents

Present: Mr. Jatin Hans, 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 declaration and injunction, the plaintiff had sought for amendment of the consequential relief for recovery of possession. The objection taken by the petitioner-defendant was that his own objection to delivery of possession at the stage of execution when the defendant was applying for recovery of possession through a decree obtained failed and consequently, the application for amendment was barred by res judicata. The Court rejected the objection and allowed for the application for amendment.

2. The defendant is in revision to contend that if a decree of possession had been passed, the plaintiff could not sue for possession over again with regard to the same property and such a decision will be barred by res judicata and cites before me the decisions of this Court and Allahabad High Court in **Vidya Dhari Vs. Sowarni 2000(1) LJR 508;**

Kehar Singh Vs. Mohinder Singh and another 1988(2) CurLJ 432;

Attar Singh and others Vs. Haargyan (died) through LRs 2005(3) RCR (Civil) 111 and Prabhunath Dixit Vs. Illrd Additional District Judge, Deoria and others AIR 2001 (Allahabad) 355 to support such a contention. I have no difficulty in understanding the proposition but what would turn out to such a suit is that the relief of declaration may be barred by res judicata but a prayer for amendment for the relief of recovery of possession itself cannot be barred. If declaratory relief is possible for any reason, the relief of recovery of possession is consequential to it. The order allowing the application for amendment ought not to be taken as meaning that the plaintiff was entitled to the decree straightway. The plaintiff will have to cover a long distance before he establishes his title in spite of an order already said to have been passed at the stage of execution when the defendant was executing a decree in which the plaintiff's objection to ward off the delivery of possession was not accepted.

3. There is no merit in the revision petition. The revision petition is dismissed. The defendant is at liberty to amend the written statement or file additional written statement as contemplated under Order 8 Rule 9 CPC pursuant to the amended pleading and take up all contentions including the plea of bar of res judicata.

(K. KANNAN)
JUDGE

April 22, 2016
Pankaj*