

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

CR No.3871 of 2014

Date of decision : 16.03.2016

Rakesh Behal

...Petitioner

Versus

Sanjay Kapoor and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. V.K. Sandhir, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

Present revision petition is directed against the order, whereby application seeking permission of the Court to amend the plaint as well as implead the subsequent purchaser by invoking the provision of Order 1 Rule 10 of CPC, has been dismissed.

Mr. Veneet Sharma, learned counsel appearing on behalf of petitioner-plaintiff submits that on 24.04.2012, suit for declaration to the effect that the plaintiff is owner, to the extent of 1/5th share in the property bearing No.17, Tagore Colony, The Mall, Amritsar and 57-B Swastika Society Near Narangpura, Ahmedabad as mentioned in the suit property was

sought. During the pendency of the suit, the aforementioned property was sold vide sale deed dated 28.08.2012 which is a subsequent event and in view of the settled law, until and unless, the sale deed is not challenged though it is hit by doctrine of lis pendence, in order to wriggle out of the wrath of the dismissal of the suit on the account of mis-joinder and non-joinder, an application under Order 1 Rule 10 CPC was filed with promptitude but the same has been erroneously been dismissed and thus prays that impugned order is not sustainable and, therefore, is liable to be set aside.

Mr. V.K. Sandhir, learned counsel appearing on behalf of respondent No.1 submits that written statement was filed on 11.09.2012 and one previous application for amendment was filed on 03.10.2012 but the amendment qua the challenge to the sale deed was never sought. He further submits that issues were framed on 11.04.2013 and three witnesses have already been examined and in case amendment is allowed, it would tantamounts to denovo trial. The factum of the challenge of the sale deed was within knowledge. He further submits that once trial has began, amendment cannot be permitted to be incorporated as it tantamount to change and alter the nature of the suit and, thus prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that amendment sought enable the Court to adjudicate the lis between the parties, for, the sale deed is dated 28.08.2012 after filing of the suit. No doubt, that the plaintiff has woken up from slumber in moving application at the stage when the suit is slated for

plaintiff evidence. The subsequent event can always be pleaded, therefore, amendment caused in the year 2012 would not come into the way of the petitioner-plaintiff.

Impugned order is set aside. Application seeking amendment of the plaint is allowed.

Revision petition is allowed, subject to the cost of Rs.10,000/- to be paid to the counsel for the respondent in the High Court.

16.03.2016

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**(AMIT RAWAL)
JUDGE**