

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

Civil Revision No.5045 of 2016

Date of decision : 08.08.2016

Sarjeet

.....Petitioner

Versus

Raj Kumar and others

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Mukesh Yadav, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 19.07.2016 passed by the learned Additional Civil Judge (Senior Division), Kosli, whereby the application moved by the petitioner/plaintiff for amendment of the plaint has been dismissed.

2. Learned counsel for the petitioner contended that the petitioner has disclosed all the material and relevant facts to his counsel but due to inadvertent mistake his counsel did not mention the relevant facts with regard to the gift deed executed by defendant No.1 in favour of defendant No.2. Now by way of amendment, he wants to challenge the gift deed No.155 dated 23.05.2014 executed by defendant No.1 in favour of defendant No.2 and also to add the relief for declaration qua this gift deed in the prayer clause. He contended that the proposed amendment will not change the nature of the suit so the learned trial Court has wrongly

dismissed the application.

3. I have duly considered the aforesaid contentions.

4. The petitioner has filed the suit for declaration and permanent injunction.

5. He has moved the application for amendment of the plaint in order to challenge the gift deed No.155 dated 23.05.2014 executed by defendant No.1 in favour of defendant No.2. It is not disputed that in the written statement filed by the defendant it was categorically mentioned that defendant No.1 had executed the gift deed in favour of defendant No.2. All the particulars of the gift deed were mentioned in the written statement. The said written statement was filed on 04.10.2014. Thereafter, the replication was filed on 25.04.2015. The issues were framed on 25.08.2015. The affirmative evidence of the plaintiff and the evidence of the defendant was concluded and case was listed for rebuttal evidence on 15.02.2016. Even thereafter, the petitioner availed nine opportunities to lead the rebuttal evidence, then this application was moved. As per proviso to Order 6 Rule 17 of Code of Civil Procedure, 1908, no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligences the parties could not raise the matter before the commencement of the trial. The plea taken by the petitioner that his counsel inadvertently did not mention the relevant facts with respect to the gift deed does not appeal to the reasons as after filing of the written statement, the plaintiff has availed opportunity to file the replication and then the evidence was led by the parties. Thus, there is

nothing to conclude that in spite of due diligence the petitioner could not seek the amendment to challenge the gift deed dated 155 dated 23.05.2014 before commencement of the trial.

6. Thus, I do not find any illegality in the impugned order, which may warrant any interference by this Court.

7. Resultantly, the present revision petition being devoid of merits is hereby dismissed.

08.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No