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

Civil Revision No.6028 of 2015 (O&M)

Date of decision:16.02.2016

Amar Singh

... Petitioner

versus

Brinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sukhdev Saini, Advocate,
for the petitioner.

Mr. Aman Vashisht, Advocate,
for the respondent.

K.Kannan, J. (Oral)

CM No.2671-CII of 2016

Application is allowed, as prayed for. Statement of
DW1 is taken on record.

Civil Revision No.6028 of 2015

1. The revision petition is against the order disallowing an amendment brought by the plaintiff to claim by means of a mandatory injunction, the relief of possession and for some damages. The suit is filed by the plaintiff contending that he is the owner in possession of property. The defendant's contention was that the property was shamlat deh and transferred by means of an unregistered agreement of sale to one Sumitra Devi and he has, in

turn, purchased it through unregistered agreement from Sumitra Devi. He is already in possession of the adjoining land and he has planted *safeda* trees. The defendant has denied that the plaintiff is in possession to secure the relief of injunction.

2. In the course of trial, it was elicited in the cross-examination that the defendant has cut the *safeda* trees and this was made use of by the plaintiff to bring amendment for a mandatory injunction. The objection to the amendment that prevailed before the court below was that a relief of mandatory injunction for possession will change the character of suit and the relief of damages also will involve new evidence to be given after the defendant was examined. It is the further contention that it was most inconceivable that the plaintiff would have retained possession after the transfer of shamlat deh to Sumitra Devi through an unregistered document.

3. The issue of whether possession could be transferred through an unregistered document of whether such document could be relied on for proof of possession and the extent of admissibility will be matters that will be considered at the trial. If the plaintiff had been indiscreet and made only a so-called admission in the trial as a basis for bringing an amendment, I will allow for the amendment as merely a subsequent event and impose a cost of ₹ 20,000/- to be paid to the defendant. The amount shall be paid within a period of 4 weeks, failing which, the order already passed will stand. If the

amendment is carried after payment of costs, the defendant shall have the benefit of filing the amended written statement or additional statement in the manner contemplated under Order 8 Rule 9 CPC to the extent to which it is relevant for the amended portion only. The amendment will not be construed as proof of what is asserted from the amended pleading and the plaintiff will have the benefit of additional evidence on the basis of amendment and the respondent, needless to state, will also have a right of evidence rebutting the plaintiff's assertion.

4. The impugned order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

16.02.2016
sanjeev