

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7013 of 2014

Date of decision : May 10, 2016

Mohinder Singh

..... Petitioner

Versus

Gurcharan Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Gautam, Advocate
for the petitioner.

Mr. G. S. Punia, Senior Advocate with
Mr. Prabinder Singh Punia, Advocate
for respondent Nos. 1 to 4.

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?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the dismissal of the application filed by invoking the provisions of Order 6 Rule 17 CPC for amendment of the plaint to set up the alleged family settlement Annexure P-7 dated 18.8.2004 which would show regarding handing over of the possession in pursuance to the two sale deeds dated 18.2.1994 and 16.5.1994.

Learned counsel for the petitioner submits that the amendment sought to be incorporated would enable the Court to adjudicate the /is in a suit seeking restraint order against the defendants from interfering in the peaceful possession over the land measuring 14 Kanals 1 ½ Marlas. No doubt that there is no issue of

title. The family settlement envisages handing over of the possession and such an amendment, in case is allowed, can be rebutted. The amendment sought is most innocuous, thus urges this for setting aside the impugned order.

Mr. G. S. Punia, learned Senior counsel assisted by Mr. Prabinder Singh Punia, appearing on behalf of the respondent submits that the impugned order is dated 14.7.2014, thereafter the plaintiff suffered a statement and the evidence has been closed vide order dated 12.9.2014 and passed on certified copy of the zimni order which reads thus:-

“Plaintiff after tendering into documentary evidence Ex. PX1 to PX16 & closed his evidence in affirmative. On request the case is adjourned to 24.9.2014 for evidence of the defendant, PF/DM and list of witnesses if any be filed within 5 days. Only 3 effective opportunities will be granted to the defendant for concluding their evidence.”

He further submits that in case the application for amendment is allowed, it would tantamount to de novo of the trial and re-opening of the evidence, which is not permissible in law. Even otherwise, plaintiff in order to prove the possession has to stand on his own legs which he miserably failed to do so. The factum of family settlement is of 1995, it is not a case where subsequent event can be permitted to be introduced by way of amendment. Even otherwise, he could lead the evidence by leading evidence in affirmative. The application is wanting compliance of expression “exercise of due diligence”, rather it has been stated due to “oversight”, thus urges this Court to affirm the

impugned order.

I have heard learned counsel for the parties, appraised the paper book and of the view that since the evidence has been closed in the year 2014, I am of the view that by that time the case was slated for defendant's evidence. It has been submitted by Mr. Punia that the defendant has closed the evidence and the case is ripe for arguments. In a suit for injunction, the family settlement arrived at between the vendor, plaintiff-petitioner and between the co-owners would be immaterial. The plaintiff must have lead evidence in this regard. In case, interference is made, it would tantamount to de novo trial.

In view of the aforementioned facts, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

May 10 , 2016
archana