

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

C.R. No. 2460 of 2015

Date of decision : 01.05.2017

Jaswinder Singh Makker

....Petitioner

V/s

Balbir Singh & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. C.L. Sharma, Advocate for respondent no. 1.

RAJAN GUPTA J.

Present revision petition is directed against the order passed by court below whereby prayer of the plaintiff-petitioner to amend the plaint at the appellate stage has been rejected. It has been urged before the court that as possession of the property had been taken by some of the respondents during the pendency of proceedings, it was necessary to add the prayer for possession of the property. Application, thus ought to have been allowed. On behalf of respondent no. 1 it has been submitted that application is misconceived as suit remained pending for considerable time. Only after same was dismissed and appeal was preferred by the plaintiff, he moved instant application. Same has been rightly rejected by the court below.

I have heard counsel for the parties.

It appears that plaintiff-petitioner filed a suit for declaration that he was owner in joint possession of land as described in head note of the plaint and also that judgment/decreed dated 26.09.1991 passed in suit for specific performance on the basis of agreement to sale dated 25.05.1984 was

illegal. He also sought permanent injunction to restrain defendant no. 1 from executing the decree dated 26.09.1991. Suit was dismissed by court below on 22.02.2012. Plaintiff filed appeal before the lower appellate court on 29.03.2012. Two and half years thereafter, he moved instant application for amendment of the plaint. Appellate court rejected the prayer observing that allowing the application would amount to reopening of suit. Besides, application for amendment had not been moved at the appropriate stage. I find no infirmity with the order. Plea of the plaintiff that possession had been taken during the pendency of proceedings which would necessitate an amendment does not have any merit. In fact application for amendment on this basis is misconceived. Needless to observe that after the lower appellate court decides the appeal, necessary consequences would follow. Revision petition is without any merit and is hereby dismissed.

May 01, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No