

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

**CR No.1900 of 2018 (O&M)
Date of decision : March 22, 2018**

Barfi Devi (since deceased) through LRs Petitioner

Versus

Balram Saini and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Yashveer Kharb, Advocate for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 27.02.2018 passed by learned Addl. Civil Judge (Sr. Divn.), Samalkha, vide which an application for amendment of the written statement filed by the legal heirs of defendant No.2 was dismissed.

Heard.

It comes out that a suit for specific performance of the agreement was filed in the year 2012. Defendant No.2 is stated to have filed the written statement on 05.01.2013. Thereafter, she died and her legal heirs were impleaded on 20.03.2018 i.e. after five years when the case was at the stage of evidence of the plaintiff. The present application was filed for amendment of the written statement of defendant No.2 to claim that defendant No.2 was a bonafide purchaser for valuable consideration without notice, whereas the agreement dated 01.02.2006 is antedated, as a result of the collusion between the plaintiff and defendant No.1.

I am of the view that when the initial written statement was filed, the said pleas were available but the same were not taken. All the facts were within the knowledge of defendant No.1.

It is contended that defendant No.2 was illiterate lady and could not pass on proper instructions to her counsel. In any case, the plea that the agreement is antedated, must be within the knowledge of defendant No.2, even if, defendant No.2 was illiterate.

The provisions of Order VI, Rule 17 CPC were amended in the year 2002 and proviso is added as reproduced under:-

“Provided that no application for amendment shall be allowed after the trial is commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial.”

Such plea could have been raised before the commencement of the trial. The purpose of introducing the amendment was to curb the tendency to amend the pleadings at any stage. Now after five years, after the filing of the written statement when the trial has already commenced, such amendment cannot be allowed.

Therefore, there is no illegality or infirmity in the impugned order. As such, the present revision petition is dismissed. Since the main revision petition is dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 22, 2018

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No