

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

Civil Revision No.2918 of 2016 (O&M)

Date of decision: May 31, 2018

Manjit Kaur and others

...Petitioners

Versus

Gurpreet Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Bhalla, Advocate
for the petitioners.

Mr.Manuj Nagragh, Advocate
for the respondents.

INDERJIT SINGH, J.

Petitioners have filed this revision petition against respondent Gurpreet Singh and proforma respondent Kuljinder Kaur under Article 227 of the Constitution of India for setting aside the order dated 31.03.2016 passed by learned Addl. Civil Judge (Senior Division), Nihal Singh Wala, vide which the application filed by petitioners-defendants under Order 6 Rule 17 CPC for amendment of written statement, was dismissed.

Notice of motion was issued. Learned counsel for respondents appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that plaintiff-respondent Gurpreet Singh

filed a suit against Manjit Kaur and other defendants, for possession as owner by way of specific performance of agreement to sell dated 22.06.2013 by Jagtar Singh on payment of ₹1,29,30,000/- regarding the land measuring 48 kanals 0 marlas as fully described in the head note of the plaint. During the pendency of the suit, an application was filed by defendants No.1 to 3 for amendment of the written statement, in which it is stated that property in dispute is joint Hindu Family, Ancestral and co-parcenary property and deceased Jagtar Singh was holding the suit property as Karta. Defendants-applicants No.2 and 3 have right, title and interest in the suit property since their birth as defendants and Jagtar Singh are governed by Hindu Law in matters of alienation and succession as co-parceners.

Learned Addl. Civil Judge (Sr. Divn.) Nihal Singh Wala, vide order dated 31.03.2016 dismissed the application.

The perusal of the record shows that plaintiff has filed the suit on the basis of agreement to sell for specific performance. In the suit for specific performance, the main pleading is that whether agreement to sell has been executed by the defendants or their predecessor and whether defendants remained willing and ready to perform their part of contract or not or whether the plaintiff is entitled for relief of specific performance or in the alternative. In the present case, the defendants are pursuing the suit being LR's of Jagtar Singh, who entered into agreement to sell with the plaintiff. The defendants want to amend the written statement by taking the plea that property is a joint Hindu Family, Ancestral and co-parcenary property and Jagtar Singh was Karta. As per law, the Karta has every right

permanent injunction restraining the Karta from alienating the suit land. They can only challenge the sale deed that it is without legal necessity etc. In the proposed amendment, the defendants are not alleging these facts that the agreement to sell in question is without legal necessity nor they are challenging this agreement to sell as null and void etc.

The proposed amendment cannot be allowed in this suit. Secondly, these facts were already in the knowledge of the defendants and the trial Court has also held that this amendment could have been added with due diligence before the commencement of the trial. Therefore, in view of the proviso of Order 6 Rule 17 CPC, this amendment cannot be allowed at this stage.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 31.03.2016 passed by learned Addl. Civil Judge (Sr. Divn.), Nihal Singh Wala, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No