

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

CR No.2764 of 2018

Date of decision: 30th April, 2018

Karamjit Singh

... Petitioner

Versus

Harjinder Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Munish Gupta, Advocate for the petitioner.

FATEH DEEP SINGH, J.

Plaintiff, now revisionist, Karamjit Singh had during the pendency of the suit before the Court of learned Additional Civil Judge (Senior Division), Garhshankar had filed an application under Order VI Rule 17 CPC read with Section 151 CPC on the grounds that the applicant wants to amend the plaint by adding words 'or in the alternative seeking suit for joint possession of the property' and the learned Court through impugned order dated 22.03.2018 dismissed the application.

Heard Mr. Munish Gupta, Advocate for the petitioner and perused the records of the case.

Admittedly, the plaintiff Karamjit Singh has since expired and the present suit is being pursued by his legal representative Sarabjit Singh who claims his rights have originated on the basis of a Will when admittedly he is a complete stranger to the property in question until and

unless he is able to legitimately and legally prove the Will which may be subject matter of dispute during the course of time.

It is not the case of the revisionist that he at any point of time was ever in possession of the property in question which is a dwelling unit and has been dispossessed during the pendency of the suit. The trial has commenced and is being carried on for six years. By allowing the revisionist to amend his plaint and add the alternative relief being sought to be incorporated would change the very nature of the suit and protract the trial which has gone ahead to a large extent.

With the amendment of Civil Procedure Code with effect from 01.07.2002 a proviso has been laid down in the statute that no application for amendment shall be allowed after trial has commenced unless the Court comes to a conclusion that in spite of due diligence a party could not have raised the matter before commencement of the trial.

In his arguments, learned counsel for the petitioner could not show what sort of due diligence was there or inability of the plaintiff to bring about this amendment. Their Lordships in '**Chander Kanta Bansal v. Rajinder Singh Anand**' 2008(2) RCR (Civil) 801, have defined 'due diligence' to be reasonable diligence as a prudent man would exercise in the conduct of his own affairs and has cautioned that unless a party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. Learned counsel for the petitioner could not convince this Court how there has been due observation of diligence and it is the own stand of the applicant revisionist that the owner defendant

Kamaljit Kaur has died on 05.12.2009 and her heirs are threatening dispossession of the plaintiff, certainly speaks ill of the revisionist of having slept over the matter for such a long period of time. When it is admitted stand of the parties and specific stand of the plaintiff that they want to go in for partition of the property and which has never come about in the present suit, and the suit has been filed on 10.09.2012, and the present application has come about on 08.03.2018 after an inordinate delay and therefore, is even itself suggestive of the lack of due diligence on the part of the applicant. The trial Court has given a well reasoned order which does not calls for showing any indulgence. The revision petition being without any merit stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

April 30, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No