

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.2952 of 2018 (O&M)

Date of Decision.04.05.2018

Mukhtiar Kaur (since deceased) through LRs and othersPetitioners

Vs

Angrej Singh (since deceased) through LRs and othersRespondents

2. C.R. No.2962 of 2018

Mukhtiar Kaur (since deceased) through LRs and othersPetitioners

Vs

Angrej Singh (since deceased) through LRs and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Jammu, Advocate
for the petitioners.

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AMIT RAWAL J.(ORAL)

C.M. No.9033-CII of 2018 in C.R. No.2952 of 2018

C.M. No.9056-CII of 2018 in C.R. No.2962 of 2018

The applications for impleading the legal representatives of deceased-Mukhtiar Kaur are allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

C.M. No.9034-CII of 2018 in C.R. No.2952 of 2018

C.M. No.9057-CII of 2018 in C.R. No.2962 of 2018

The applications for impleading the legal representatives of deceased-Angrej Singh are allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

Main cases

This order of mine shall dispose of two revision petitions preferred by the petitioners-defendants. C.R. No.2952 of 2018 (hereinafter

called the first revision petition) has been preferred against the order dated

09.03.2018 whereby the application submitted by the respondent-plaintiff for amendment of the plaint at the evidence stage of the plaintiff has been allowed. C.R. No.2962 of 2018 (hereinafter called the second revision petition) has been preferred against the order dated 11.04.2018 whereby the application moved by defendant No.3, subsequent vendee, for recording the statement that defendant No.3 is willing to execute the sale deed in favour of the plaintiff with no objection from defendant No.1 and 2, original owners, has been dismissed.

Mr. P.S. Jammu, learned counsel appearing on behalf of the petitioners in the first revision petition submitted that the respondent-plaintiff on 19.12.2013 instituted the suit for specific performance of agreement to sell dated 26.8.2012 executed by defendants in favour of the plaintiff for sale of agricultural land measuring 42 kanals 14 marlas being 1/3rd share in the total land measuring 128 kanals 4 marlas situated in village Mallekan, Tehsil and District Sirsa along with tubewell with electric connection and kotha with all rights of every description pertaining thereto including the right of path, warabandi, right of khal, trees etc. on payment of ₹1,12,11,875/- after deducting ₹40,00,000/- paid as earnest money out of total sale consideration of ₹1,52,11,875/-. However, when the suit was slated for respondent-plaintiff's evidence, an application (Annexure P-4) was submitted under Order 6 Rule 17 CPC for amendment of the plaint by incorporating paragraph 6-A adding the alternative relief which was *ex facie* barred by law of limitation. As per the amended provisions of Order 6 Rule 17 CPC, the amendment cannot be permitted to be incorporated after trial had begun. The application is bereft of the expression "despite due diligence". Despite taking all the aforementioned legal objections, the court

below has abdicated in allowing the application, therefore, there is illegality and perversity.

In the second revision petition, he submitted that defendant No.3 had moved an application for recording the statement advocating the plea of the plaintiff for the purpose of execution of agreement to sell dated 26.08.2012 which has been rejected by the Courts below for no rhyme and reason, despite the fact that the statement was recorded as the Court has kept the issue open.

I have heard learned counsel for the petitioners-defendants jointly assailing the orders in the revision petitions and of the view that there is no force and merit in the submissions of Mr. Jammu. Admittedly, in the suit for specific performance of the agreement, alternative relief is inherent. Without expressing on merits or demerits of the matter as it may seriously prejudice or take away rights of the defendants, they can always raise objection whether the amendment would relate back to the filing of the suit or from the date it was submitted with regard to the alternative relief in the amended written statement or can call up the Court to decide the aforementioned question *vis-a-vis* limitation at the appropriate stage but not in the manner and mode adopted herein. The amendment sought to be incorporated, in my view, is not that onerous which had seriously prejudiced the right of the defendants.

As regards second revision petition, the defendants will be able to take advantage of all the applications and statements suffered at an appropriate stage but should have been advised not to assail the order, for, inference can be drawn for the same in their favour which can be looked into and pressed into service at the time of final arguments.

In view of the aforementioned fact, I do not intend to differ with the impugned orders under challenge as the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petitions are dismissed.

(AMIT RAWAL)
JUDGE

May 04, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No