

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

**C.R. No.4154 of 2017 (O&M)
Date of Decision.06.12.2018**

Surinder Kaur

....Petitioner

Vs

Gurpartap Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

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AMIT RAWAL J. (ORAL)

The revision petition is directed against the impugned order dated 21.05.2016 whereby the application for amendment of the plaint in suit for joint possession and declaration has been dismissed.

Mr. Rakesh Dhiman, learned counsel appearing on behalf of the petitioner submitted that aforementioned impugned order was challenged in C.R. No.6596 of 2016 wherein this Court vide order dated 30.09.2016 had granted liberty to the petitioner to lead evidence in support of the proposed amendment. However, unfortunately, the suit in the meantime was dismissed for default and the aforementioned revision petition was dismissed as withdrawn vide order dated 01.05.2017 (Annexure P-7) with liberty to file fresh petition as and when the suit was restored. It is in these circumstances, the revision petition has been filed.

Despite service, respondents are not appearing as noticed in the two previous orders. Accordingly, I proceeded to decide the revision petition.

The plaintiff has filed the suit for declaration that he

along with defendants is owner in possession to the extent of 1/5th share of the suit property as prescribed in column No.A, B and C in the head note of the plaint by challenging the Will dated 09.03.1981 executed by Gurmail Singh son of Gurbachan Singh in favour of defendants No.1 and 2 with consequential relief of injunction for restraining defendants from selling or creating third party rights. However, during the pendency of the suit, defendants sold the land and the subsequent vendee namely Arshdeep Singh @ Harshdeep Singh filed application under Order 1 Rule 10 CPC, which was allowed and therefore, in such circumstances, application for amendment of the plaint was sought in the head note of the plaint and prayer clause as well as incorporating para 7-A, in order to challenge the aforementioned sale executed during the pendency of the suit.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in **Thomson Press (India) Ltd vs Nanak Builders & Investrs.P.Ltd (2013) 5 SCC 397**, the amendment sought is essential and necessary, as in case he succeeds, the petitioner may face the wrath of third party objections. The amendment, in my view, is subsequent event and required to be incorporated.

The impugned order is set aside and the application seeking amendment in the plaint is allowed. The revision petition is allowed in the above terms.

(AMIT RAWAL)
JUDGE

December 06, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No