

CR No.5504 of 2015 (O&M)

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

CR No.5504 of 2015 (O&M)
Date of Decision : 31.07.2018

Alauddin

...Petitioner

VERSUS

Shaukat & ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: None for the petitioner.

Mr. Adarsh Jain, Advocate for respondent Nos.2 to 5.

Service of respondent No.1 dispensed with vide order dated 25.10.2017.

B.S. WALIA, JUDGE (ORAL)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to order dated 04.08.2015 (Annexure P-1) passed by the learned Civil Judge (Jr. Division), Hodal, dismissing the application filed by the petitioner plaintiff for amendment of plaint under Order 6 Rule 17 CPC.

2. Brief facts of the case leading to the instant revision petition are that a suit was filed by the petitioner-plaintiff for directions to respondent / defendant No. 1 to execute and get registered sale deed in terms of agreement to sell dated 12.07.2005 qua suit land detailed in paragraph No. 1 of the plaint as also for directing respondent / defendant Nos. 2 to 5 to join hands with respondent / defendant No. 1 for executing and getting the sale deed registered in favour of the petitioner plaintiff as also for a decree for permanent injunction restraining the respondent defendants from interfering in the peaceful and lawful possession of the petitioner plaintiff over the suit land and from alienating in any manner the suit land to any stranger except the petitioner plaintiff etc.

final arguments, application was moved on 21.04.2015 for amendment of the prayer clause in the plaint that on 12.07.2005 respondent-defendant No.1 was joint co-owner in possession over the suit land and was not in a position to deliver actual physical possession of the suit property to the petitioner-plaintiff, therefore, in addition to the decree for specific performance, a decree for joint possession be passed in favour of the petitioner-plaintiff and against the defendant in terms of agreement to sell dated 12.07.2005 entered between the petitioner-plaintiff and defendant No.1.

4. Learned counsel for respondent Nos. 2 to 5 contended that the application for amendment was moved at the final stage to set up a new case, the case as set up by the petitioner plaintiff was false, no agreement to sell was executed between petitioner plaintiff and respondent defendant No. 1., on the contrary, respondent defendant No. 1 had sold the suit land to respondent defendant Nos. 2 to 5 and a sale deed was executed in respect thereto in the office of the Sub Registrar Hodal on 13.06.2006 whereupon possession of the suit land was duly handed over to them. It was also contended before the learned Civil Judge that the petitioner plaintiff was trying to fill up the lacuna of his weak case and if the amendment was allowed, the same would change the nature of the case.

5. The learned Civil Judge dismissed the prayer for amendment. None is present on behalf of the petitioner despite the case having been called out the second time. In the circumstances, I am not inclined to adjourn the case. I have considered the pleadings and heard learned counsel for respondent/defendants Nos. 2 to 5. The proposed amendment is totally inconsistent with the earlier pleadings for while in the plaint it was averred that the respondent-defendant No.1 was owner in possession of the suit property and on receipt of entire sale consideration of ₹ 8

Lakh vide agreement to sell dated 12.07.2005 had put the petitioner plaintiff in actual physical possession of the suit property and since then he was in the actual physical possession of the same but in the application, amendment sought is that on 12.07.2005 respondent-defendant No.1 was joint co-owner in possession over the suit land and was not in a position to deliver actual physical possession of the suit property to the petitioner-plaintiff. In **Mathia vs Prem Lal & others-1992 CCC 724 HP, Hon'ble Himachal Pradesh High Court** has held that amendment prayed for cannot be allowed if the same is totally inconsistent with the pleadings.

6. Besides, the agreement to sell was executed on 12.07.2005 whereas the civil suit was filed in the year 2011. Therefore, even at the time of institution of the civil suit, the amendment sought to be made could have been incorporated in the suit itself but was not so done for reasons best known to the petitioner-plaintiff. Now, once the evidence of the parties has been concluded and the case is fixed for arguments, application for amendment of plaint was filed on the basis of revenue record dated 12.07.2005. Proviso to Order 6 Rule 17 CPC stipulates that prayer for amendment is not permissible after the trial has commenced unless the court comes to the conclusion that despite due diligence the party could not have raised the matter before the commencement of the trial. The facts of the case do not disclose exercise of due diligence. In the circumstances, I do not find any infirmity with the order passed by the learned Civil Judge (Jr. Division), Hodal.

7. However, as none is present on behalf of the petitioner, the revision petition is dismissed in default.

July 31, 2018
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No