

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

C.R. No.5662 of 2016

Date of Decision.17.04.2018

Pritam Singh

.....Petitioner

Vs

Sukhpal Kaur and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Amandeep Singh Saini, Advocate
for the respondents.

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AMIT RAWAL J.(ORAL)

The revision petition is directed against the order dated 23.03.2016 (Annexure P-1) whereby the application submitted on behalf of the petitioner-plaintiff qua amendment of the plaint to claim relief of possession as well as joint possession of the suit land by adding para No.10A and valuation of the suit in para No.15 has been dismissed.

Mr. Surinder Garg, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the petitioner-plaintiff instituted the suit bearing No.149 of 2010 for declaration by challenging the judgment and decree dated 7.10.1988 titled as “Sukhpal Kaur Vs. Pritam Singh” in respect of land measuring 45 kanals 14 marlas as half share of land measuring 91 kanals 8 marlas to be illegal, null and void being result of fraud along with permanent injunction restraining defendant No.1 from alienating the suit land. Though both the parties concluded evidence, necessity arose to claim possession as well as joint possession as in case of succession of the suit, status of the petitioner-plaintiff would be of a co-sharer, therefore, there

would be no need for filing a separate suit but the Court below declined the application on the premise that the trial had already commenced. The aforementioned amendment is essential and necessary and would prevent the multifarious litigation.

Mr. Saini, learned counsel appearing on behalf of the respondents submitted that the order under challenge is perfectly legal and justified and does not call for interference, as in case the application is allowed, it would tantamount to *de novo* trial, which is not permissible. No explanation has come forward of exercise of due diligence.

I have heard learned counsel for the parties and appraised the paper book. The petitioner-plaintiff had moved application for seeking amendment of the plaint when the petitioner-plaintiff was leading evidence. Since there was no stay with regard to further proceedings except of passing of the final order, the defendants have already concluded their evidence.

Mr. Surinder Garg has made a statement that the petitioner-plaintiff would not lead fresh evidence in respect of the proposed amendment. The relief sought is an ancillary one and in case the suit fails, it cannot prevent the petitioner-plaintiff from filing fresh suit.

However, in view of the aforementioned, I am of the view that the trial Court should not have non-suited the petitioner-plaintiff as it would prevent multifariousness of the litigation. Moreover, the respondents-defendants would also be at liberty to amend the written statement by taking all possible objection, which shall be kept open and decided at the final stage. Resultantly, the impugned order is set aside subject to payment of costs of ₹5000/- to be paid to the respondents to defray the litigation expenses and the amendment application is allowed. The petitioner-

plaintiff is permitted to file the amended plaint with a caveat that the petitioner would not be permitted to lead fresh evidence. Needless to say that the respondents-defendants shall be at liberty to file the amended written statement.

**(AMIT RAWAL)
JUDGE**

April 17, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No