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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5513 of 2017 (O/M)
Date of decision : 15.5.2018

Kulwant Kaur and another

..... Petitioners

Versus

Gurcharan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramnish Puri, Advocate,
for petitioners.

Mr. N.K. Manchanda, Advocate,
for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 3.8.2017, passed by learned Additional District Judge, Moga, vide which an application filed by defendants No. 2 and 3-petitioners for amendment of written statement was dismissed.

I have heard learned counsels for parties and have also carefully gone through file.

It comes out that plaintiff-respondent has filed a suit for possession of plot measuring 22 marlas by way of specific performance of

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agreement of sale dated 30.6.1980. He also sought declaration that sale deed dated 29.12.2008 executed by defendant No. 1 in favour of defendants No. 2 and 3 is illegal and null and void. He also sought permanent injunction. The suit was filed on 13.1.2009 and was ultimately decreed by learned Additional Civil Judge (Senior Division), Moga, on 13.2.2015 i.e. after six years. Thereafter, in appeal, an application for amendment of written statement was filed whereby defendants No. 2 and 3 want to amend the written statement and raise preliminary objections that they are bonafide transferees for valuable consideration in good faith and without notice of alleged original contract alleged by plaintiff. It is also sought to be claimed that defendants No. 2 and 3 through their husbands made reasonable inquiries regarding ownership of defendant No. 1 regarding property in dispute. Defendant No. 1 was recorded as owner of land in revenue record and was in actual physical possession at that time.

The learned Additional District Judge, Fatehgarh Sahib, took view that amendment was very much within knowledge of defendants. Said plea was not taken despite due diligence.

I am of the view that after amendment of Code of Civil Procedure, a proviso was added that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to conclusion that inspite of due diligence, parties could not raise the matter before commencement of trial. In present case, trial continued for six years. Only after getting the adverse judgment by trial Court, petitioners woke up and now want to raise the plea of bonafide purchasers. In the absence of such plea, certain rights have accrued in favour of plaintiff. If amendment is allowed, additional evidence will also be required as defendant will have

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to lead evidence to show that he is bonafide purchaser and naturally plaintiff will have the right to cross examine witnesses of defendants to prove same. Therefore, virtually retrial will begin. As such, there is no illegality or infirmity in impugned order. Consequently, revision is dismissed. Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

15.5.2018

sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No