

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

C.R.No.5949 of 2018 (O&M)

Date of Decision: 17.09.2018

Dulichand

....Petitioner

Versus

Karambir

....Respondent

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

Present: Mr. Bhisham Kumar Majoka, Advocate for the petitioner.

B.S.WALIA, J (ORAL)

CM No.20124-CII of 2018

Application is allowed, as prayed for, subject to all just exceptions.

Main case

[1] Revision petition has been filed praying for the quashing of order Annexure P/5 dated 18.08.2018 passed by the learned Civil Judge (Jr. Division), Faridabad whereby the application filed by the petitioner-defendant, seeking amendment of the written statement was dismissed.

[2] Brief facts of the case are that the defendant-petitioner moved an application under Order 6 Rule 17 CPC for taking up the plea of adverse possession. The learned trial Court dismissed the application on the ground that the trial had already commenced, the petitioner had failed to exercise due diligence, besides, the allegation that the defendant-petitioner was in adverse possession over the suit property for more than 20 years, was a right

which had not accrued during the pendency of the trial, the respondent-plaintiff had already concluded his evidence and the case was fixed for defence evidence, therefore, the application was merely to fill up the lacuna.

[3] Learned counsel contended that as per settled law, amendment in pleadings could be allowed even at a belated stage if the same was essential for determining the real question in controversy between the parties.

[4] I have considered the submissions of learned counsel and perused the record thoroughly.

[5] A perusal of the impugned order reveals that the learned trial Court took into account that the defendant-petitioner had already filed a suit for declaration and permanent injunction with consequential relief of mandatory injunction against the respondent-plaintiff and the same as well as appeal against said decision had been dismissed on merits. Besides, application under Order 39 Rules 1 & 2 CPC in the suit out of which this petition arises had also been dismissed and in the aforesaid background, the application under Order 6 Rule 17 CPC was just to delay the decision of the case.

[6] Learned counsel, on query has informed that earlier the defendant-petitioner had filed Civil Suit No.189 dated 09.11.2011/22.2.2014 titled Duli Chand vs Karambir s/o Pat Ram and four others for a declaration and permanent injunction with consequential relief of mandatory injunction that he was owner in possession of the disputed house i.e. the same house which is the subject matter of the instant revision petition by way of adverse possession and that impugned sale deed No.1195 dated 25.04.2011 in favour of respondent No.1-Karambir was illegal, null

and void. The defendant-petitioner had also sought a decree of permanent and mandatory injunction in the suit filed by him. However, the aforesaid suit was dismissed by the learned trial Court vide order dated 03.08.2016. Feeling aggrieved, the defendant petitioner filed an appeal against dismissal of the suit but later withdrew the same vide order dated 02.07.2018 passed by the learned Additional District Judge, Faridabad in CA No.451 of 2016 in case titled as Duli Chand vs. Karamvir and four others.

[7] The petitioner-defendant, in my view, has failed to establish any factual or legal basis to support his case therefore, in the light of the position as noted above, I do not find any reason whatsoever to interfere with the well reasoned order passed by the trial Court especially when the claim in respect of amendment sought has already been rejected by the learned trial Court in the civil suit filed by the defendant-petitioner and appeal against the decision in said civil suit was got dismissed as withdrawn.

[8] In the circumstances finding no merit in the revision petition, the same is dismissed in limine.

September 17, 2018
manoj

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No