

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

CR No.7674 of 2014

Date of decision: 19th April, 2018

Avtar Singh

... Petitioner

Versus

Narender Kaur & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. P.K. Chugh, Advocate for the petitioner.

Respondent No.1 – Expired.

Mr. D.K. Prajapati, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

Petitioner Avtar Singh as well as proforma respondents No.3 to 6 namely Jitender Singh, Manbir Singh, Sarvjeet Singh and Manjeet Singh, had filed a suit for declaration with consequential relief of prohibitory injunction on the allegations that one Joginder Singh had purchased 5 bighas of land situated in village Mangar, Tehsil Balabgarh, District Faridabad from Rishal Singh who was attorney of Ram Parsad, Champa and Srupi, through sale deed No.8167 dated 27.08.1981 regarding which mutation No.990 dated 31.12.1981 was entered. It is alleged that defendants, as a conspiracy to grab this property on 28.12.1982, got registered sale deed bearing No.10492 dated 28.11.1982 before Sub Registrar Balabgarh by impersonation, deceit and fraud to the extent of half of this property measuring 2 Bighas 10 biswas in favour of

defendant Narender Kaur, whereas Naresh Rani in a similar manner through registered sale deed No.10494 dated 28.12.1982 got registered sale deed of the remaining portion of this land i.e. 2 Bighas 10 Biswas and thus, claimed that names of the defendants have been wrongly entered in the revenue record and hence the suit in question. It was at the stage of rebuttal evidence as well as arguments when an application has been moved by the plaintiff (now revisionist) seeking an application under Order VI Rule 17 CPC for amendment of the suit on the grounds that they could not mention relief of possession of the suit property as well as to seek delivery of the possession thereof. It was through the impugned orders dated 17.09.2014 (Annexure P3), same was dismissed and that is how the present revision has come about.

Upon hearing Mr. P.K. Chugh, Advocate for the revisionist petitioner and Mr. D.K. Prajapati, Advocate on behalf of respondent No.2. With the amendment in the Code of Civil Procedure with effect from 01.07.2002, following provisions have been added:

“17. Amendment of pleadings – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the

party could not have raised the matter before the commencement of trial.”

The proviso to this bears out that no application for amendment shall be allowed after trial has commenced unless the Court comes to a conclusion that in spite of due diligence, a party could not have raised the matter before the commencement of the trial.

Reverting back to the instant case, at the time of filing of suit, the plaintiff/revisionist was fully aware of the fact as to transfer of the property in question and that the possession was with the defendants. But as is so, they never bothered to file any relief for possession of the suit property which was well within their knowledge and after almost 6 years when the trial has concluded and the matter is for final adjudication in the year 2008, has filed the suit for which no plausible and acceptable explanation is coming forth, what prevented the plaintiff (now revisionist) from seeking such a relief at the very onset of filing of the suit. They were aware that the possession of the property was with the other side and they had also sought to seek regarding delivery of the possession and filing the suit after such an inordinate delay and challenging sale deeds which was alleged to have been executed in the year 1982, certainly the relief being sought in the suit is also hopelessly time barred, besides the fact as has been contended by learned counsel for the respondent to the submissions of learned counsel for the petitioner who has only tried to take a sympathetic consideration of the plea of illiteracy and lack of knowledge of the revisionist that since an entirely

new case is sought to be made out by the proposed amendment and the same certainly to the mind of this Court is not permissible. Learned counsel for the respondent has placed reliance on '**Harbhajan Kaur v. Jaswant Singh**' 2001(3) RCR (Civil) 723; '**Devinder Dev v. Krishal Lal**' 2001(1) RCR (Civil) 341; '**Karnail Singh v. Kuldip Singh**' 1998(3) RCR (Civil) 232, and '**Manjit Kaur and another v. Manjit Singh**' 2010(1) PLR 537 and which position of law could not be controverted by learned counsel for the petitioner. The Court below has rightly concluded that there is gross and incondonable negligence on the part of the applicant/plaintiff (now revisionist) for unduly prolonged awakening and seeking the relief through this amendment and when such a relief at the time of filing of the suit was within the knowledge of the plaintiff/revisionist, and that too when the suit was at final adjudication. Keeping in view such a situation, courts needs to be slow in coming to the aid of a party who by his own act and conduct is not entitled to any such relief.

In the light of the same, finding no illegality or perversity in the impugned orders the same needs to be upheld and the revision petition being hopelessly without merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

April 19, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No