

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

**CR No.8766 of 2015 (O&M)  
Date of decision : February 05, 2018**

**Balveer Singh and another ..... Petitioners**

**Versus**

**Bhateri Devi and others ..... Respondents**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:-** Mr. R. Kartikey, Advocate for  
Mr. Kanwal Goyal, Advocate for the petitioners.

Mr. Sunny Deep Juneja, Advocate for respondent Nos.1 to 5.

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 ?

**KULDIP SINGH J. (ORAL)**

Impugned in the present revision petition is the order dated 16.11.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Gurgaon, vide which an application filed by the plaintiff under Order VI, Rule 17 read with Section 151 CPC, 1908 was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that plaintiffs-petitioners had filed a suit for declaration as well as for permanent and mandatory injunction against the defendants including defendant No.6- Prem Properties Pvt. Ltd. In the plaint, it was pleaded that plaintiffs are purchasers of the plot from firm M/s. Prem Properties Pvt. Ltd. While mentioning about the sale dated 31.07.1997 in favour of plaintiff No.1, two agreements i.e. dated 11.04.2005 and 06.03.2005 in favour of plaintiff Nos. 3 and 4 were also mentioned

and it was also claimed that plaintiffs were in peaceful possession of the suit property.

It comes out that after framing issues, but before recording the evidence, present application for amendment was filed by the plaintiffs, wherein plaintiffs want to add *para No.18*, stating about the said agreements and also want to add certain paragraphs alleging the said agreements to sell dated 11.04.2005 and 16.03.2005, claiming that they have stepped into the shoes of defendant No.6 and also make necessary prayers regarding readiness & willingness and cause of action and make prayer for specific performance of the said agreements. The impugned order dated 16.11.2015 passed by learned trial court shows that the trial court primarily dismissed the application on the ground that the said agreements have not been placed on file and that the agreements are of the year 2005 and now the specific performance of the same have become time barred on account of a lapse of period of limitation of three years.

Admittedly, before the trial court, the said agreements were not placed on file. However, before this Court, said agreements have been placed on file as Annexure P-7 and P-8, which show that as per agreements, the entire sale consideration is paid; the possession is also delivered and only act alleged to be done was the execution of the sale deed as and when requested by the plaintiffs. Therefore, it is claimed on behalf of the plaintiffs that time was not essence of the agreements. Plaintiffs had got the possession of property in the part performance of the agreements. The entire sale consideration is paid and only sale deed is to be executed for which

limitation of three years will not apply. In any case, this is subject to just objection that may be raised by the defendants.

It also comes out that the agreements were already pleaded. The plaintiffs want to add the prayer for specific performance and accordingly add certain paragraphs to make averments in this regard.

The amendment is necessary for the just decision of the case and to decide all the controversies between the parties. The application was moved before the commencement of the trial i.e. recording of the evidence. Therefore, the trial court erred in dismissing the application.

Accordingly, the present revision petition is allowed. The application for amendment is allowed, subject to payment of Rs.5,000/- payable to the defendants-respondents.

**(KULDIP SINGH)**  
**JUDGE**

**February 05, 2018**

sarita

Whether speaking / reasoned                      Yes

Whether Reportable:                                      No