

CR No.8746 of 2017

{1}

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

CR No.8746 of 2017

Date of decision:20.11.2018

Malkiat Singh

... Petitioner

Vs.

Munish Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A.S.Gill, Advocate
for the petitioner.

Mr. Sandeep Arora, Advocate
for respondents No.1 and 2.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 16.11.2017, whereby, an application under Order 6 Rule 17 of Code of Civil Procedure for amendment of the plaint after framing of the issues for incorporating the relief of possession in a suit for permanent injunction declaring agreement to sell dated 30.03.2012 to be null and void, has been dismissed.

Mr. A.S.Gill, learned counsel appearing on behalf of the petitioner-plaintiff/vendor submitted that suit aforementioned was filed on the various grounds seeking injunction against the respondents/vendees. The relief of possession is inevitable when the declaration of the agreement to sell was sought to be declared null and void. The other party can always

be permitted to raise objection in the written statement and compensated in terms of money as the same would not change the cause of action.

Mr. Sandeep Arora, learned counsel appearing on behalf of the respondents submitted that it would be hit by Order 2 Rule 2 of Code of Civil Procedure as plea of possession was available. There is recital of handing over the possession to the vendee in the agreement to sell. Even earlier application for amendment filed which was allowed vide order dated 14.10.2015. The present application is wholly misconceived and liable to be dismissed as it is a ploy to circumvent the order declining the injunction under Order 39 Rules 1 and 2 CPC with regard to forcible interference and possession.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Gill.

The decision of the application under Order 39 Rules 1 and 2 CPC in fact gave a cause of action to seek the possession as the order declining the injunction was as per the terms and conditions of the agreement to sell. The relief of possession can always be sought and question of limitation can always be objected by the defendants at an appropriate stage.

The trial Court, in my view, remained oblivious of the aforementioned provisions of law. Once there is specific prayer for declaring the agreement to sell to be null and void, relief of possession is inevitable. The relief of possession does not change the nature of suit or

take away the valuable right of the defendant.

In view of the aforementioned position, I set aside the impugned order and allow the application for amendment. Let the amended plaint be filed within a period of 15 days from the date of receipt of certified copy of this order and amended reply within another 15 days or the date to be fixed by the trial Court subject to costs of ₹7,000/- which is a condition precedent.

November 20, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No