

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

CR No. 2712 of 2018(O&M)

Date of decision: 08.05.2019

Seema Devi and another

... Petitioners

Vs.

Prem Chand Singla

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M.S. Kathuria, Advocate
for the petitioners.

Mr. Sudhir Kashyap, Advocate for
Mr. Gaurav Mohunta, Advocate for the respondent.

AMIT RAWAL J. (Oral)

The petitioners-defendants are in revision petition against the impugned order dated 02.04.2018 whereby application for amendment of the plaint at the evidence stage with interim relief of stay in a suit for mandatory injunction with alternative relief has been allowed.

The respondent-plaintiff instituted a suit for mandatory injunction seeking direction against the petitioners-defendants for mutation of land measuring 112 K-0M described in the head note of the suit. Further direction to execute the sale deed in favour of the respondent-plaintiff as well as seeking relief of permanent injunction by restraining the petitioners-defendants was also sought. The suit aforementioned was filed on 11.03.2015. The petitioners-defendants filed written statement by raising the plea of maintainability under Section 41(h) of the Specific Relief Act.

Mr. M.S. Kathuria, learned counsel appearing on behalf of the petitioners submitted that the application for amendment of plaint has been filed by the plaintiff-respondent only to incorporate the relief of Specific

Performance of agreement to sell dated 24.01.2012, which has been erroneously allowed by ignoring the provisions under the Limitation Act. As per the terms of the agreement, sale deed was to be executed on 23.07.2012 and the application filed by the plaintiff for amendment of the plaint under Order 6 Rule 17 CPC was without due diligence. The plaintiff intends to set up a new case, which cannot be permitted to do so, thus, prayed for setting aside the impugned order.

Per contra, Mr. Sudhir Kashyap, learned counsel appearing on behalf of the respondent submitted that the application for amendment was necessary in view of the objections raised in the written statement. As per Article 54 of the Limitation Act, the objection qua limitation cannot be taken, as suit was only filed when there was breach of the terms of the agreement and urged for dismissal of the revision petition.

I have heard learned counsel for the parties and perused the paper book.

The suit was filed by the plaintiff on 11.03.2015, which is not in dispute. It is yet to be seen whether there is any valid execution of agreement to sell and if so whether there was any breach of the terms thereof. Though the case fixed before the trial Court is at initial stage i.e. for evidence, as referred to above, though in the first instance, the arguments of learned counsel for the petitioners-defendants appear to be attractive regarding maintainability of the amendment of plaint but owing to the stage, *ibid*, parties will get ample opportunities to adduce their respective evidence with regard to breach of the terms of the agreement. Moreover, necessity for amendment of plaint is to be proved

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after recasting the issues under the provisions of Order 14 Rule 5 CPC read with Rule 2 Order 10 but it would not preclude petitioners-defendants to raise arguments at final stage of the suit.

With the aforementioned observation, the present revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

08.05.2019
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Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No