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

**CM No.14588-CII of 2019 in/and
Civil Revision No.7970 of 2017
Date of Decision: 06.09.2019**

Kulbhushan

.....Petitioner

Vs

Bhupinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. J.S. Thind, Advocate
for the applicant-petitioner.

Mr. Aditya Dassaur, Advocate
for the non-applicants/respondents No.1 to 4.

RAJ MOHAN SINGH, J. (Oral

CM No.14588-CII of 2019

The present application has been filed for restoration of the revision petition which was rendered infructuous vide order dated 27.07.2018 with a liberty to the petitioner to get it revived as and when suit before the trial Court is restored. Now the suit before the trial Court has been restored vide order dated 08.05.2019 passed by the Civil Judge (Jr. Divn.) Phagwara.

In view of above and after having considered the submissions made by learned counsel for the parties, the present application is allowed. Main case is restored to its

original number.

With the concurrence of both the learned counsel, main case is taken up today itself for final disposal.

Main case

[1]. Petitioner has challenged the order dated 13.09.2017 passed by the Civil Judge (Jr. Divn.) Phagwara vide which the application under Order 6 Rule 17 CPC and Order 1 Rule 10 read with Section 151 CPC for impleading Baljinder Singh son of Amrik Singh to be a party defendant in the suit has been dismissed.

[2]. Evidently a joint application was filed for both the aforesaid reliefs. In view of **Nirmal Singh and others vs. Tarsem Singh and others, 2015(2) R.C.R. (Civil) 679**, joint application for the aforesaid reliefs is not maintainable. The trial Court was required to decide both the reliefs separately.

[3]. Perusal of the record would show that the suit for specific performance came to be filed on 04.02.2012 on the basis of agreement to sell dated 12.04.2006 executed between plaintiff Kulbhushan and Piara Singh. After the demise of Piara Singh, his legal representative/defendants No.1 to 5 have come on record. In the written statement filed by the defendants/legal representative of Piara Singh, they have denied the very

execution of agreement to sell. Plaintiff seeks impleadment of Baljinder Singh in whose presence the amount of Rs.6 lakhs was allegedly paid on two different occasions i.e. Rs.2 lakhs on 31.03.2007 and Rs.4 lakhs on 16.04.2007. Plaintiff further seeks to incorporate the necessary pleadings qua Baljinder Singh in the plaint.

[4]. It is not in dispute that the original agreement to sell has not come on record at the instance of the plaintiff, rather application under Section 65 of the Evidence Act is pending consideration before the trial Court. The application for amendment of the plaint and for impleading aforesaid Baljinder Singh as defendant No.5 in the suit came to be filed on 15.05.2016. Perusal of the impugned order would show that the same is lacking with regard to the maintainability of the suit, cause of action for seeking amendment and on limitation as well.

[5]. At this stage, without making any observations on merits of the case, it would be just and appropriate to direct the trial Court to decide all the aforesaid issues in accordance with law on the basis of pleadings of the parties. Consequently, the impugned order dated 13.09.2017 passed by the Civil Judge (Jr. Divn.) Phagwara is set aside. This revision petition stands disposed of.

[6]. In the event of filing separate applications by the plaintiff within four weeks after passing of this order, the trial Court shall proceed to decide the same in accordance with law preferably within a period of six weeks thereafter without being influenced by any statement of fact recorded hereinabove.

September 06, 2019

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No