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

**Civil Revision No.7354 of 2019 (O&M)
Date of Decision: 21.11.2019**

BINDER KUMAR

.....Petitioner

Vs

JAGJIT SINGH KALARA AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Surinder Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 17.10.2019 passed by the Civil Judge (Junior Division) Jalandhar vide which the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint was rejected.

[2]. Plaintiff/petitioner filed a suit for declaration to the effect that the sale deed dated 26.11.1998 executed by defendant No.1 as attorney of defendant No.2 in favour of defendant No.3 is illegal, null and void and has been executed by way of fraud.

[3]. On earlier occasion, defendant No.2 (Paramjit Singh) and defendant No.3 (Usha Kalra) filed a Civil Revision No.4691 of 2018 against the order dated 07.10.2015 passed by the Civil

Judge (Junior Division) Jalandhar, vide which the application for setting aside the *ex parte* order dated 18.05.2015 and application dated 21.03.2011 for staying the suit till final decision of the CWP No.9101 of 1990 was dismissed.

[4]. This Court vide order dated 21.02.2019 granted one opportunity to the petitioners in the aforesaid CR No.4691 of 2018 to file written statement subject to payment of adequate costs. It was made clear that the petitioners of the said revision petition will not be entitled to summon any witness already examined by the plaintiff for further cross-examination. Payment of costs was held to be the condition precedent for granting indulgence by the trial Court in the context of filing of written statement by the defendants.

[5]. Plaintiff has filed an application under Order 6 Rule 17 CPC for amendment of the plaint on the ground that during course of evidence of the plaintiff, the defendants brought on record a copy of alleged sale deed dated 26.08.1986 executed by Pritpal Singh son of Major Kirpal Singh being attorney of Maharaja Sukhjit Singh in favour of Paramjit Singh (defendant No.2). Plaintiff alleged that during the course of his cross-examination, the said document was neither produced by the defendants, nor the same was in the knowledge of the plaintiff as well as in the knowledge of the Department.

[6]. Perusal of recital of the sale deed dated 26.11.1998 would show that there is a mention of sale deed dated 26.08.1986. The plaintiff has already moved an application to the Vigilance Department on 11.07.2007 for registration of a criminal case. In the said application, there is a recital of sale deed dated 26.08.1986. The plaintiff was very much in the knowledge of the sale deed dated 26.08.1986 and the challenge at this stage, in my considered opinion would be barred by limitation. The present suit was filed only in the year 2009. Evidence of the plaintiff has almost concluded.

[7]. It is a settled principle of law that all *bona fide* amendments are to be allowed. The proposed amendment is not found to be *bona fide* in nature. The proposed amendment is barred by time and would cause material prejudice to the defendants. Each case depends upon its own facts. In the instant case, the proposed amendment is nothing but an act of *mala fide* just to reopen the case by introducing a cause of action which was very much in the knowledge of the plaintiff at the time of filing of the suit. In the suit challenge has been made to sale deed dated 26.11.1998 which has a recital of sale deed dated 26.08.1986 on the basis of which the present application for amendment has been moved.

[8]. At this stage, no indulgence for bringing the cause of

action in the context of sale deed dated 26.08.1996 can be granted, particularly, when the said cause of action is independent in nature and the plaintiff can avail his legal remedies in accordance with law. In considered opinion of this Court, the indulgence granted at this stage, after commencement of the trial would definitely cause material prejudice to the defendants/respondents and their valuable right would be materially affected.

[11]. In view of aforesaid, this revision is found to be totally devoid of merits and is accordingly dismissed.

November 21, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No