

106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-13311-CII-2021

in/and

CR-322-2021

Date of Decision: 03.12.2021

HARJINDER PAL SINGLA

...Petitioner

Versus

AJIT KAUSHAL AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashish Gupta, Advocate
for the applicant-petitioner.

Mr. Balwinder Singh, Advocate
for Mr. Kshitij Sharma, Advocate
for the non-applicant/respondents.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

CM-13311-CII-2021

This is an application for preponing the main case, which is pending for 20.05.2022. For the reasons stated in the application, the same is allowed, as prayed for, and the main case is taken up on Board today itself.

Main case

Present revision petition is against the impugned order dated 04.02.2021 passed by the learned Civil Judge (Junior Division), Nabha, whereby, the application for amendment of plaint filed by the plaintiff/petitioner was dismissed on the ground that such an amendment would prejudice the defendants and would change the entire nature of the suit.

2. Heard.

3. I am in disagreement with the reasons recorded by the learned trial Judge so as to dismiss the application on the ground that the proposed amendment would change the nature of the suit. Had it been a case that the trial is at an advanced stage and parties had adduced their evidence, there could have been substance in the reasoning adopted by the trial Court. Here is a case, where the suit is at a very preliminary stage; written statement is yet to be filed and the proposed amendment is caused by subsequent events after filing of the plaint i.e. dispossession of the plaintiff from the premises during pendency of the suit proceedings, which is being sought to be pleaded with consequential relief of seeking possession of the suit premises and declaration qua suit property, apart from permanent injunction which has already been prayed for.

4. In the entirety, the relief as well as the pleadings are quite inter-related and the trial Court ought to have allowed the amendment, given that the written statement is yet to be filed.

5. Learned counsel for the petitioner relies upon judgment rendered by this Court in ***Malkiat Singh vs Munish Kumar 2019(1) PLR 291***, relevant of which is reproduced herein below :-

“6. 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.”

6. In the premise, the revision petition is allowed. The petitioner be given one opportunity to place on record his amended plaint, subject to payment of a nominal cost of Rs.2,500/-, which shall be utilized to plant 25 trees of not less than Rs.100/- per tree, of deciduous and perennial in

nature, of any variety viz. Neem, Amla, Gulmohar and/or Alstonia, in the neighbourhood of the property, which is under dispute. Plantation shall be carried out under the supervision of the District Horticulture Department. In case, the petitioner defaults in doing so, liberty is granted to the Registry to place the matter before this Court to report non-compliance thereof. Proof of plantation to be furnished by the petitioner in the Registry of this Court, along with supporting letter from the horticulture department, to be placed before this Court upon receipt thereof.

7. Learned counsel appearing on behalf of the respondents submits that the written agreement, which is now sought to be the basis of claiming title, was executed way back in the year, 1970 and in any case, the same is hopelessly time barred and therefore, the suit is *per se* not maintainable, even if, the amendment was to be allowed.

8. Be that as it may, the respondents are at liberty to take up the plea of limitation and/or file appropriate application, seeking dismissal on that ground after the amendment is carried out.

December 03, 2021
gurpreet

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No