

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1115-2016 (O&M)
Date of decision: 21.07.2022

Gurmail Singh

... Petitioner

Vs.

Gurcharan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for the petitioner.

None for the respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 13.01.2016 passed by the Civil Judge (Jr. Divn.), Ludhiana, in Civil Suit No.38820 of 2013 titled as Gurmail Singh Vs. Gurcharan Singh and others, vide which an application filed by the petitioner-plaintiff for amendment in the plaint, was dismissed.

It is worth noticing here that while issuing notice of motion on 15.02.2016, pronouncement of the final order was stayed. The said order is continuing till date. It is stated that the trial Court is now waiting for order of this Court to adjudicate the suit finally.

Learned senior counsel for the petitioner, at the very outset, has

submitted that only reasoning given by the trial Court, while passing the impugned order is that same has been filed at a belated stage and without showing any due diligence, for which an application can be allowed. It is further submitted that the averments made in the application for amendment of the plaint read as under: -

“9. That due to oversight the relief of specific performance directing the defendants to execute the sale deed was omitted in this case and now the plaintiff wants to add the relief of mandatory injunction against the defendants by adding the relief in the head note as well as prayer clause after the date ‘07.04.1994’ and before word ‘And’ in the following way: -

“And for mandatory injunction directing the defendants No.1 to 3 to execute the new sale deeds in favour of the plaintiffs in respect of the suit property and get the same registered by appearing before the Sub Registrar, Ludhiana.

10. That the applicant/plaintiff wants to add para No.8(a) in the plaint in the following way: -

“8(a). That the defendants, after receiving the full sale consideration turned dishonest and denied the execution of the sale deeds in favour of the plaintiff. The original sale deeds have not been supplied by the office of the Sub Registrar and under such circumstances the defendants can be directed by way of mandatory injunction to execute the new sale deeds in respect of the suit property in favour of

the plaintiff.”

11. That applicant/plaintiff also wants to add the words in para No.12 of the plaint “and for the relief of mandatory injunction is fixed as Rs.500/- on which a court fee of Rs.50/- is payable” after the words ‘Rs.195 and Rs.130/- respectively’ and before the words ‘and the court fee’ and further the applicant wants to substitute the word ‘Rs.33/-’ with the words ‘Rs.83/-’.”

It is further submitted that so far as the amendment by way of adding para No.8(a) is concerned, it is only to clarify the pleadings, which are already in the plaint and in para No.12, the plaintiff-petitioner only wants to add the Court fee qua the relief of mandatory injunction and for the relief clause in the prayer, the plaintiff wants to add prayer for mandatory injunction.

Learned senior counsel stated at Bar that for all proposed amendments, the petitioner-plaintiff will not lead any fresh evidence and no prejudice will be caused to the respondents-defendants in any manner.

There is no representation on behalf of the respondents.

After hearing learned senior counsel for the petitioner and considering the fact that though the application was filed at a belated stage, after evidence of the defendants started, however, the plaintiff has given an undertaking that if the amendment is allowed, which is only to clarify the pleadings and to make an additional prayer for mandatory injunction, qua which the right has accrued subsequently in his favour, he will not lead any fresh evidence, this petition is allowed and the impugned order dated 13.01.2016 is set aside, however, subject to deposit of costs of Rs.10,000/- to be paid to the

respondent-defendant.

It is made clear that the trial Court will grant an opportunity of hearing to the petitioner-plaintiff to file the amended petition and he will not be permitted to lead any fresh evidence, but the respondents-defendants, if want to lead any fresh evidence, after filing of the amended written statement to the amended plaint, will be granted two effective opportunities for the said purpose.

With the aforesaid observations, present petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

21.07.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No