

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

CR-1315-2020 (O&M)

Date of decision: 14.09.2022

Ganesh Kumar

...Petitioner

Versus

Sanjeev Kumar Goyal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner
 Mr. Namit Gautam, Advocate for respondent no.1, 2 to 5

ANIL KSHETARPAL, J (Oral)

The petitioner herein is the plaintiff in a suit for grant of decree of permanent injunction. The defendants have filed a counter claim claiming that Neeru Gupta is the owner in possession, on the basis of sale deed executed, in her favour in the year 1996. The plaintiff's application for permission to amend the prayer clause in order to seek relief of declaration that the aforesaid sale deed, in favour of Neeru Gupta, is not binding on the rights of the plaintiff, has been dismissed.

The trial court, while dismissing the application, has held that the plaintiff now wants to seek a new relief, which was in his knowledge and the trial of the suit has also commenced and in view of the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, the amendment cannot be allowed after the trial has commenced unless the court comes to a conclusion that inspite due diligence, parties could not raise the matter before the commencement of the trial.

In the facts of the present case, it is evident that the amendment sought is formal in nature. The plaintiff has already sought

relief of the decree of permanent injunction. By amendment, he wants to add the relief to the fact that such sale deed will not affect his rights. Admittedly, he is not the executant of the sale deed in favour of Neeru Gupta. Therefore, he is not required to seek annulment of the sale deed. The amended suit will be governed by Section 34 of the Specific Relief Act, 1963. Section 31 of the Specific Relief Act, 1963 shall not be applicable.

Moreover, the defendants have already filed a counter claim on the basis of the sale deed. The sale deed is already before the Court.

Keeping in view the aforesaid facts, the order passed by the trial court is not sustainable. The Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another** 2022 SCC online SC 1128 and **Varun Pahwa vs. Renu Chaudhary** (2019) 15 SCC 628 and by this Bench in **Shri Sanatan Dharam Sabha (Regd.) Gausala Bazaar, Hoshiarpur vs. Sita Devi** (CR-5151-2019 decided on 13.02.2020) held that while considering the prayer for amendment of the pleadings, the court must make a distinction between the substantive and formal amendments. A mere addition of the prayer has been put in the category of the formal amendment.

The question of limitation is a mixed question of law and fact, which is required to be proved by leading sufficient evidence. The aforesaid issue is left to be decided by the trial court.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

14.09.2022
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE