

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

**Civil Revision No.695 of 2021
Date of Decision: 16th May, 2022**

Jarnail Singh

....Revisionist-Petitioner

Versus

Gurdial Singh (Since deceased) through his LRs

....Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Arvind Kashyap, Advocate,
for the revisionist-petitioner.

Mr. Anil Kumar Garg, Advocate,
for LRs of the respondent.

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MEENAKSHI I. MEHTA, J.(ORAL)

Feeling aggrieved by the order dated 17.02.2020 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division) Khamano (for short 'the trial Court') whereby the application (Annexure P-4) moved by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff'), under Order 6 Rule 17 read with Section 151 CPC for seeking amendment in the plaint has been allowed, the petitioner-defendant (here-in-after to be referred as 'the defendant') has preferred the instant revision petition.

The plaintiff (since deceased and now represented through his LRs) filed the civil suit against the defendant for seeking a decree for possession of the suit land by way of specific performance of the agreement to sell dated 24.04.2014 while claiming the same to have been

executed by the defendant in his favour in respect of the said land for the sale consideration @ Rs.36 lac per acre and he also sought the alternative relief of the recovery of Rs.1,58,00,000/-, consisting of the sum of Rs.79 lac paid by him as earnest money and another sum of Rs.79 lac on account of damages etc, along-with interest thereon. Subsequently, he has moved application Annexure P-4 for seeking amendment in the relevant parts of the plaint, while averring that it had come to his notice that prior to executing the above-said agreement to sell in his favour, the defendant had executed a similar agreement qua the suit land in favour of one Tejinder Singh and it being so, the relief of specific performance of the afore-said agreement, as executed in his favour, would no more be available to him and he could pursue the matter for seeking relief of the recovery of the above-said amount from the defendant.

I have heard learned counsel for the petitioner-defendant as well as learned counsel for the LRs of the respondent-plaintiff in the present revision-petition and have also perused the file carefully.

Learned counsel for the defendant contends that the relief of the recovery of the above-said amount, as being claimed by the plaintiff, is barred by limitation and moreover, the suit for recovery is not maintainable in the present form and in these circumstances, the impugned order is not legally sustainable and the same deserves to be set aside.

However, I do not find the afore-raised contentions to be tenable because as regards the contention qua the claim/relief of recovery of the said amount being time barred, it is worth-while to mention here that

at the very time of filing the civil suit itself, the plaintiff had made a specific prayer in the plaint for the same as an alternative relief, meaning thereby that the said relief is not being added in the plaint by way of amendment. Even otherwise, the issue of limitation would be a mixed question of law and facts and the same can and shall be looked into and adjudicated upon by the trial Court at the appropriate stage after appreciating and evaluating the evidence that may be led by both the parties on record in support of their respective contentions in this regard and the same cannot be decided at this stage.

So far as the question of maintainability of the amended claim is concerned, it would again be a subject matter for consideration and decision by the trial Court at the relevant stage.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the present revision petition, being devoid of any merit, stands dismissed.

16.05.2022*seema***(MEENAKSHI I. MEHTA)
JUDGE***Whether speaking/reasoned:**Yes**Whether Reportable:**No*