

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

124

2023:PHHC:086265

CR-3849-2023

Date of decision: 11.07.2023

ARUN KUMAR

..Petitioner

Versus

HARSH MANGAL

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Kumar Mallan, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

1. Though, the bar has resolved to observe no work day on account of continuous rain, however, Sh. Sunil Kumar Mallan, Advocate, has entered appearance on behalf of the petitioner. He has been heard at length.

2. The civil suit filed by the plaintiff for grant of decree of declaration to the effect that the transfer deed in dispute is liable to be rectified is pending at the stage of final arguments.

3. At this stage, his application for permission to amend the plaint to challenge the transfer deed on the ground that the same is illegal, null and void being a coparcenary property has been dismissed. The learned counsel representing the petitioner fairly admits that the plaintiff is trying to bring an entirely new case by seeking an amendment, however, he submits that the transfer deed (sale deed) is *per se* illegal because the property could not be transferred by his father in favour of his other son and this fact came to the notice of the petitioner in the year 2022.

4. This Court has considered the submissions.

5. Once it is undisputed that the plea sought to be incorporated by way of an amendment is totally unconnected with the original plaint, the conclusion drawn by the Civil Court refusing permission to amend the plaint does not from perversity. After the commencement of the trial of the suit, as per proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908, the amendment can be allowed only when the party proves due diligence. It is the case of the petitioner that the defendant in his cross-examination has disclosed that the property is co-parcenary. He submits that the plaintiff came to know of this fact only when the defendant disclosed this fact in his cross-examination. In the considered opinion of the Court, the fact as to whether the property is co-parcenary or not is not based on the statement of the defendant. It is for the plaintiff to assert and prove that the property was co-parcenary. As already noticed, the case is at the stage of final arguments. The plaintiff wishes to set up an entirely new case.

6. In view of the aforesaid, no ground to interfere in exercise of powers under Article 226 of the Constitution of India, is made out.

7. Dismissed.

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

July 11th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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