

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

**CR-3210-2022 (O&M)
Date of decision: 24.01.2023**

Jai Bhagwan

...Petitioner

VS

Om Parkash Saini

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Yashasvi Kapila, Advocate for
Mr. Abhishek Jindal, Advocate,
For the petitioner.

None for respondent, despite service.

ARUN MONGA, J. (ORAL)

Revision petition is directed against order dated 05.04.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurugram, vide which application filed by the respondent-plaintiff under Order 6 Rule 17 read with Section 151 CPC seeking amendment of the plaint was allowed.

2. Learned counsel for petitioner submits that he is the owner in possession of the suit land. He had not executed any GPA, Will or agreement to sell, in respect of the suit land, in favour of the respondent. The documents relied upon by the respondent/plaintiff in trial Court in support of his case are forged. He submits that he had earlier entered into an agreement to sell with the respondent on 08.05.2011 for sale of 88 kanals of land against a sale consideration of Rs.4901 per sq. yds. The respondent had failed to make any payment in pursuance of that agreement. He submits that respondent has fraudulently forged his signatures in order to build a case in

his favour. He submits that application for amendment was filed after a gap of one year and by that application respondents wanted to convert suit for permanent injunction into suit for specific performance and same cannot be changed. Vide impugned order dated 05.04.2022 amendment application filed by the plaintiff was allowed. Hence, the instant petition.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. Order dated 05.04.2022 assailed herein is premised, *inter alia*, on the following reasoning:

“XXX XXX XXX

Arguments heard the Court is of considered opinion that the earlier suit was of suit for permanent injunction but when defendant denied the execution of sale agreement and subsequent documents then plaintiff left with no efficacious remedy but to convert the present suit by order 6 rule 17 application into suit for specific performance. The plaintiff is ready to pay court fee of Rs.2,63,500/- on total sale consideration of Rs.1,90,00,000/-. By allowing the present application the Court is avoiding the multiplicity of proceeding because if fresh suit would be filed then again defendant would raise the plea of limitation. In the light of above and in order to avoid the multiplicity of proceeding between the party the court is allowing the present amendment application.

In view of above, present application stands allowed and disposed of.”

5. Substantially primary ground of preferring revision petition before this Court impugning the order dated 05.04.2022 passed by the trial Court allowing the amendment of the plaint is that same is barred by limitation.

6. Having perused the impugned order, I am of the view that the question of limitation in the facts of the present case being mixed question of law and facts, the parties would be required to adduce their respective evidence and the trial Court shall render its findings qua the same only after appreciation thereof.

- 7. In the premise, the revision petition is disposed of with liberty to the petitioner to take the plea of limitation at the appropriate stage and it is expected of the trial Court to first render its finding qua the same before proceeding on merits of the trial.
- 8. Disposed of accordingly.
- 9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

24.01.2023
vandana

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