

[133] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6135-2019 (O&M)
Date of Decision : 11.10.2023

Luxmi Devi and others ...Petitioners

versus

Kuldeep SinghRespondent

Coram : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sanjiv Kumar Yadav, Advocate for the petitioners.
Mr. Fateh Saini, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

[1] This revision petition has been filed by the defendants to challenge the correctness of order dated 07.09.2019 passed by the trial Court, while permitting the plaintiff to amend the plaint. In substance, the plaintiff has been permitted to amend his prayer clause to claim the relief of specific performance of the agreement to sell and to seek alternative relief of refund of the earnest money. The Court did not permit the plaintiff to carry out the remaining amendments. The plaintiff does not challenge the correctness of the aforesaid order.

[2] Learned counsel representing the petitioners contends that a suit for mandatory injunction has been permitted to be converted into a suit for specific performance of the agreement to sell after the prescribed period of limitation. While relying upon the judgment passed by the Supreme Court in 'T.L. Muddukrishana versus Smt. Lalitha Ramchandra Rao', 1997 AIR (SC) 772, he contends that such amendment could not be allowed by the trial Court.

[3] This Court has considered the submission.

[4] The caption of the un-amended suit reads as under:-

“ Suit for mandatory injunction directing the defendants to hand over the vacant possession of the land measuring 24 Kanal comprising in Khewat / Khatauni No.216/249, Khasra No.15//6 (8-0), 15(8-0), 16(8-0), situated at village Bara, H.B. No.123, Tehsil & District Ambala and to execute and get register the sale deed of the suit land in favour of the plaintiff, as per the terms of agreements for sale dated 02-05-2009 & 16-11-2009, executed by the Nirmal Singh s/o Mehma Singh s/o Inder Singh r/o village Bara, Tehsil & District Ambala in favour of plaintiff vide which the said Nirmal Singh agreed to sell the suit land measuring 24 Kanal to plaintiff and for permanent injunction restraining the defendants from creating any sort of charge over the suit land and from alienating the suit land except to the plaintiff, in any manner under Order 7 Rule 1 & 2 of C.P.C. ”

[5] On a careful reading of the caption, it is evident that the plaintiff while filing the suit claimed relief of mandatory injunction, directing the defendants to hand over vacant possession of land measuring 24 Kanals. He also prayed for direction to the respondent to execute and register the sale deed in favour of the plaintiff in terms of agreement to sell dated 02.05.2009 & 16.11.2009. He has also prayed for grant of decree of permanent injunction. Thus, in substance, the plaintiff while filing the suit did make a prayer for direction to the respondent to execute the sale deed. Undoubtedly, the prayer in terms of specific performance of the agreement to sell was not made. However, in

plaintiff was called upon to pay *ad valorem* Court fee, which was deposited by him in the year 2016. Now by way of amendment only a format of the suit has been changed so as to avoid any technical objection whereas in substance, the prayer was already existed. The judgment relied upon by the learned counsel representing the petitioners in 'T.L. Muddukrishana (*supra*)', the Supreme Court held that the amendment of plaint cannot be allowed after the expiry of three years. However, as already noticed in this case, substantive prayer to that effect has already been made.

[6] Keeping in view the aforesaid facts, no grounds to interfere in the present revision petition is made out.

[7] However, the defendants shall have liberty to pray for framing of an issue on this aspect, which shall be finally decided by the Court on appreciation of evidence.

[8] With the above said observations, the revision petition is dismissed.

[9] All the pending miscellaneous application(s), if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

11.10.2023
'Rajneesh'

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