

110.

2023:PHHC:166100

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

CR-6861-2023

Date of decision: 11.12.2023

Kewal Khan

.... Petitioner

Versus

Gulzar Mohamad and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Amit Kumar Saini, Advocate for
Mr. Yashpal Thakur, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 31.08.2023 (Annexure P-5) passed by learned Civil Judge (Junior Division), Amloh, District Fatehgarh Sahib, vide which, the application filed by the petitioner under Order VI Rule 17 read with Section 151 CPC was dismissed.

2. Brief facts of the case are that the petitioner-plaintiff (hereinafter called, "plaintiff") filed a suit for permanent injunction restraining the respondents-defendants (hereinafter called, "defendants") from interfering into the peaceful possession in the suit land, as mentioned in the head note of the plaint. The case of the plaintiff is that defendant No.1, who is his brother, sold the suit land to the plaintiff vide agreement to sell dated 01.07.1996 for a consideration of Rs.6,500/-. Said agreement was duly scribed and executed in the presence of marginal witnesses.

2.1 In the suit, defendant No.1 was proceeded against ex-parte and defendants No.2 and 3 filed written statement by contending that defendant No.1 had sold the suit land to them vide sale deed dated 17.09.2018, for a consideration of Rs.96,000/-, and mutation has also been entered in their name.

2.2 It was pleaded that since the plaintiff could not narrate the whole facts in the plaint, so vide application dated 03.11.2022 (Annexure P-3) filed under Order VI Rule 17 read with Section 151 CPC, he sought amendment in para 4 of the plaint, which reads as under:-

“Moreover it was orally settled between the plaintiff and the defendant No.1 that even after the expiry of the period of execution of registration of sale deed, the plaintiff any time after giving a prior notice to the defendant No.1, can get the sale deed execute in his favour.”

Reply to said application was filed by defendants No.2 and 3 by contending that the proposed amendment was already in the knowledge of the plaintiff and he has concocted a false story to fill up the lacuna. Vide order dated 31.08.2023, said application was dismissed and it is the said order which has been impugned by way of present revision petition.

3. Learned counsel for the petitioner contends that the case is at the initial stage of evidence of the petitioner and no evidence has been tendered yet. It is submitted that for the just decision of the case, proposed amendment is necessary and no prejudice would be caused to the respondents. So, he has prayed for setting aside of the impugned order (Annexure P-5).

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. Plaintiff has filed a simple suit for injunction restraining the defendants from interfering in his suit property in any manner on the ground that defendant No.1, his brother, was owner in possession of the suit property. He executed agreement to sell dated 01.07.1996 for a consideration of Rs.6,500/- and after receiving the entire sale consideration, handed over the original sale deed and also delivered possession of the suit property to the plaintiff. The plaintiff is in exclusive possession of the suit property since then. It is well settled that amendment which is necessary for the just decision of the case can be allowed but any amendment seeking the relief which is barred by limitation, cannot be allowed. I draw support from the case in *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited and another*, 2022 AIR (Supreme Court) 4256. Plaintiff is claiming possession on the basis of agreement to sell. In a suit for injunction, title is not to be decided. Plaintiff-petitioner want to take a plea that defendant No.1 thereafter only settled that even after expiry of the period of execution of sale deed, the plaintiff at any time after giving notice to defendant No.1 can get the sale deed executed in his favour. The agreement to sell was of the year 1996. The limitation for the sale deed to be executed was 3 years from the date of accrual of cause of action. Since the agreement to sell was in writing, so any settlement thereafter could only be in writing and could not be by way of oral settlement. No reason has been given by the plaintiff as to why such plea was not taken in the plaint.

6. Keeping in view that the proposed amendment was not necessary in deciding the suit filed by the plaintiff-petitioner for permanent injunction, the learned court below has rightly dismissed the application for amendment and this Court too does not find any ground for interference in the order impugned. The revision petition is without any merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

December 11, 2023

sanjeev

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