

2024:PHHC:115426



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4433-2024 (O&M)
Date of decision: 04.09.2024

Satish Kumar

...Petitioner

Versus

Gurbachan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Robit Dutt, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. Challenge in this petition under Article 227 of the Constitution India, at the instance of the defendant-petitioner, is for setting aside order dated 27.05.2024 passed by learned District Judge, Yamuna Nagar at Jagadhri, whereby the application seeking amendment of the written statement, at the appellate stage, has been dismissed.

2. Brief facts of the case are that the suit for possession was filed by the respondent-plaintiffs based on demarcation report and *Naksha Tafafat* dated 30.03.2016 by removing construction and other apertures thereon, and for permanent injunction restraining the defendants from interfering in the actual physical possession of the plaintiffs and also from raising any further construction over the suit land or changing the existing position. On rival pleadings of the parties, the issues were framed. Both the parties led their after respective evidence. The trial Court after taking



into consideration the material before it and the submissions advanced, dismissed the suit vide judgment and decree dated 17.02.2022 (Annexure P-4).

3. Aggrieved by the same, the plaintiff-respondents preferred statutory first appeal which is still pending. Vide order dated 24.04.2023, the first appellate Court, after noticing that both the demarcation reports on record had been discarded by the trial Court, ordered digital demarcation of the land. Pursuant to the report of digital demarcation having been filed, the application for amendment of written statement was moved. The said application was dismissed vide order dated 27.05.2024. Aggrieved by the said order, the petitioner has approached this Court through the present revision petition.

4. Heard learned counsel for the petitioner and perused the record with his able assistance.

5. A perusal of the impugned order shows that the trial Court, after considering the obligation cast by the proviso to order VI Rule 17 CPC, returned a finding that despite being aware of the facts indicated in the proposed amendment, at the time of filing the written statement, the petitioner-defendant failed to establish that, despite due diligence, he could not have sought the amendment prior to the commencement of the trial. It has also been noticed that the suit was instituted on 13.05.2016 and was decided on 17.02.2022. The appeal was also preferred promptly thereafter in the year 2022 itself. The application seeking the amendment of the written statement has been filed on 26.02.2024 (Annexure P-8).



6. Learned counsel for the petitioner has argued that nature of the amendment in the suit is only an additional plea that would not require any evidence to be led. Though the argument looks attractive on the face of it but a perusal of the application seeking amendment would show that only an additional plea has been sought to be raised, whereas no amendment in the prayer clause has been sought. In the absence of any prayer having been made permitting to incorporate an additional plea at the first appellate stage and that too when the matter is at the stage of final disposal, it only appears to be an attempt to delay the disposal of the case.

7. In the light of the above discussion, this Court does not find any infirmity or illegality much less perversity, in the impugned order, which is in consonance with the ratio in *Vidyabai and others vs. Padmalatha and another*, (2009) 2 SCC 409. Thus, no interference is called for by this Court.

8. Resultantly, finding no merit in the revision petition, the same is dismissed.

September 04, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No