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

CR-5788-2019 (O&M)

Date of decision: 24.09.2025

Harbans Kaur and another

...Petitioners

Versus

Mohinder Singh (deceased) through his LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Naveen Bawa, Advocate for the petitioners.

Mr. Arnav Kumar, Advocate
for LRs of respondent No.1 and respondent No.4.

Mr. M.S. Batth, Advocate for respondent No.3.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 03.08.2019 passed by the Civil Judge (Junior Division), Ludhiana in case bearing No.CS-47615-2013 dated 06.08.2013 titled as “Harbans Kaur and another Vs. Mohinder Singh and others” vide which an application filed by the petitioners under Order 6 Rule 17 CPC for amendment of the plaint has been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONERS:-

2. Learned counsel for the petitioners has submitted that the



petitioners had filed a suit for declaration in the year 2012 to the effect that the sale deed dated 26.10.2012 executed by defendant No.1 in favour of Madhu Jain, wife of Anoop Jain, is illegal, null and void. It is submitted that other prayers including the prayer for permanent injunction and mandatory injunction were also made. It is argued that subsequently, the petitioners came to know that sale deed dated 05.09.2011 was executed by defendant No.3 in favour of defendant No.1 which was also illegal and thus, the petitioners moved an application dated 12.07.2019 (Annexure P-3) under Order 6 Rule 17 CPC for amendment of the plaint and in the same, they wanted to make an amendment to challenge the said sale deed dated 05.09.2011. It is submitted that the said application has been dismissed by the trial Court vide order dated 03.08.2019 which is against law and deserves to be set aside and application filed by the petitioners for amendment of the plaint deserves to be allowed.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:-

3. Learned counsel for the respondents, on the other hand, have opposed the present revision petition and have submitted that the present suit was filed in the year 2012 and one of the prayer made in the suit (Annexure P-1) was for declaration to the effect that the sale deed dated 26.10.2012 was null and void. It is submitted that a perusal of the impugned order would show that reference of the earlier sale deed dated 05.09.2011 was made in the sale deed dated 26.10.2012 itself and thus, once, the petitioners-plaintiffs were challenging the sale deed dated 26.10.2012, it was apparent that they had knowledge about the said sale



deed dated 05.09.2011. It is further submitted that the mutation with respect to the said sale deed dated 05.09.2011, executed by Ludhiana Improvement Trust in favour of defendant No.1, was also duly sanctioned and it is only because defendant No.1 had become owner that he could have executed subsequent sale deed dated 26.10.2012, which has been challenged in the suit. It is argued that the written statement was filed by defendant No.3 on 24.12.2012, and a specific pleading with respect to sale deed dated 05.09.2011 was made at that stage and thereafter, petitioner No.1/plaintiff No.1 had come for examination in chief on 23.02.2015 and the sale deed dated 26.10.2012 was exhibited by her as Ex.PW2/1. It is submitted that the issues in the present case were framed on 06.03.2014, and thus, it is apparent that the trial had commenced and it is after a period of five years from the trial having commenced that the present application dated 12.07.2019 was filed, at a time when repeated adjournments were being sought by the plaintiffs to conclude their evidence and after last opportunity having been granted to conclude the same. It is submitted that there has been no due diligence on the part of the petitioners in filing the application for amendment, and thus, amendment is hit by the proviso to Order 6 Rule 17 CPC.

4. Learned counsel for the respondents have further submitted that at any rate, challenge to the sale deed dated 05.09.2011 in the year 2019 would be barred by limitation, more so, when factum of the said sale deed is duly reflected in the revenue record and has also been mentioned in the sale deed dated 26.10.2012 and had specifically been stated by



defendant No.3 in his written statement on 24.12.2012, as limitation to challenge a sale deed is three years. In support of his arguments, learned counsel for the respondents have relied upon the judgment passed by the Hon'ble Supreme Court in case titled as **Vidyabai and others Vs. Padmalatha and another** reported as **2009(2) SCC 409.**

ANALYSIS AND FINDINGS:-

5. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

6. It is not in dispute that the petitioners/plaintiffs had filed the suit in the year 2012. A perusal of the plaint (Annexure P-1) would show that apart from the prayer for permanent injunction and mandatory injunction, following prayer with respect to declaration had also been made:-

“Suit for declaration to the effect that the alleged sale deed dated 26.10.2012 registered with the office of Sub Registrar, Ludhiana (West) at Wasika No.11586 dated 26.10.2012 executed by defendants No.1 in favour of Smt. Madhu Jain wife of Shri Anoop Jain in regard to the suit property is illegal, null, void-abinitio, ineffective, inoperative qua the rights of the plaintiff and is liable to be declared as nonest/nullity in the eyes of law and it does not affect the valuable rights of the plaintiffs over the suit property and it also does not confer any title in favour of Smt. Madhu Jain and the title of the defendants No.1 himself is defective as he



had got the ownership of the suit property transferred to his name through fraud, misrepresentation and through wrongful means;

On the basis of oral and documentary evidence”

7. It is thus apparent that in the suit filed, challenge has been made to the sale deed dated 26.10.2012. A perusal of the impugned order dated 03.08.2019 would show that it had specifically been observed that in the sale deed dated 26.10.2012 executed by defendant No.1 in favour of Madhu Jain-defendant No.4, reference had been made to the earlier sale deed dated 05.09.2011, vide which defendant No.1 had become the owner. The said observations made in the impugned order have neither been disputed before this Court, nor copy of the sale deed dated 26.10.2012 has been annexed to dispute the said fact. In the impugned order, two other important aspects have been mentioned which have also not been disputed before this Court. First being that defendant No.3 had filed written statement on 24.12.2012 and in para 1 of the preliminary objections, defendant No.3 had categorically pleaded that defendant No.1 had got executed the sale deed dated 05.09.2011 in his favour and that further when the present petitioner No.1/plaintiff No.1 was examined in chief on 23.02.2015, sale deed dated 26.10.2012 was exhibited as Ex.PW2/1 and also the fact that the mutation regarding the said sale deed dated 05.09.2011 had been sanctioned in the revenue record.

8. Thus, from the said undisputed facts, it is apparent that apart from the fact that mutation regarding sale deed dated 05.09.2011 was duly reflected in the revenue record, the said sale deed was also mentioned in



the sale deed dated 26.10.2012 which was challenged by the petitioners in the plaint and was also mentioned by defendant No.3 in its written statement filed on 24.12.2012. It is further undisputed that the issues in the present case were framed on 06.03.2014 and the plaintiffs/petitioners had taken numerous opportunities to conclude their evidence and the application under Order 6 Rule 17 CPC dated 12.07.2019 for amendment of the plaint was filed after last opportunity had been granted to the petitioners to lead their evidence subject to costs. Apparently, the facts which are sought to be incorporated by virtue of the amendment were in the knowledge of the petitioners prior to the date of commencement of the trial and thus, it could not be remotely said that the application had been moved by the petitioners in the year 2019 by exercising due diligence.

9. The trial Court, vide order dated 03.08.2019, had dismissed the said application by observing that the petitioners/plaintiffs had not acted with due diligence.

10. Proviso to Order 6 Rule 17 CPC has been incorporated on 01.07.2002 and the said provision reads as under:-

***“17. Amendment of pleadings.—**The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the



party could not have raised the matter before the commencement of trial.”

A perusal of the above provision would show that it has been specifically mentioned in the proviso that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before commencement of the trial.

11. The Hon’ble Supreme Court in the case of **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others**, reported as **2006(12) SCC 1**, had observed that trial is deemed to commence when the issues are settled and the case is set down for recording of evidence and for the purpose of satisfying the requirement of Order 6 Rule 17 CPC (as amended), the necessary particulars are required to be mentioned in the application which would satisfy the requirement of law.

12. The Hon’ble Supreme Court in the case of **Vidyabai and others** (Supra) had further observed that the proviso to Order 6 Rule 17 CPC restricts the power of the Court and it puts an embargo on the exercise of its jurisdiction and the Court’s jurisdiction in a case where amendment is sought after the commencement of the trial is limited. In the said case, defendants therein had moved an application for amendment after issues had been framed and the plaintiffs’ witnesses therein had filed affidavit by way of evidence and the trial Court had dismissed the application under Order 6 Rule 17 CPC whereas the High Court had



allowed the said application under Order 6 Rule 17 CPC. The Hon'ble Supreme Court, after considering the law on the point and also after taking into consideration the proviso to Order 6 Rule 17 CPC had set aside the order of the High Court and had upheld the order of the trial Court dismissing the application. Additionally, it was observed that the High Court while setting aside the order did not satisfy the test of judicial review and it had not been found that the trial Court had exceeded its jurisdiction in passing the impugned order therein nor it had been found that there was any error of law committed by the trial Court. The law laid down in the abovesaid case would fully apply in the present case as it is not in dispute that there was no due diligence in filing the application for amendment and thus, amendment sought was hit by the proviso to Order 6 Rule 17 CPC. Additionally, in the present case, the respondents have also vehemently opposed the application for amendment on the ground that the challenge sought to be made by virtue of the amendment, to the sale deed dated 05.09.2011 is barred by limitation, as it should have been made within a period of three years.

13. The Hon'ble Supreme Court in the case of **“Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil”**, reported as **(2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed



in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

14. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

24.09.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No