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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5835-2023

Date of decision:-13.01.2025

PANDIT SANTOSH KUMAR MISRA

...Petitioner

Versus

LAXMI PRASHAD AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr. Saksham Malhotra, Advocate for
Mr. Deepak Arora, Advocate
for the petitioner.

None for the respondents.

SUVIR SEHGAL, J.(ORAL)

1. By way of present petition filed under Article 227 of the Constitution of India, petitioner - plaintiff has impugned order dated 08.08.2023, Annexure P4, passed by the learned Civil Judge (Jr. Divn.), Chandigarh whereby an application filed by him under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint has been declined.

2. Petitioner filed a suit for mandatory injunction directing the respondents to hand back the possession of a plot in village Mauli Jagran, U.T., Chandigarh on the averment that Rattan Lal, plaintiff's father, gifted the plot to respondent No.1 – defendant No.1 on the condition that he will construct a temple in the name of 'Shri Laxmi Narain Shiv Mandir Daneshwar Mahadev'. An affidavit dated

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26.01.2007 is claimed to have been executed by Rattan Lal imposing a condition that respondent No.1 will not alienate the plot. Plaintiff has pleaded that respondent No.1 did not fulfill both the conditions. Rather, respondent No.1 handed over the possession of the plot to a priest, respondent No.2, who erected a tin shed and idols were installed. Respondents were proceeded against ex-parte. Issues were framed by Trial Court on 04.10.2018. An application dated 25.03.2019, Annexure P2, for amendment of plaint was filed by the petitioner, which has been rejected by the impugned order.

3. Counsel for the petitioner has been heard.

4. By way of proposed amendment, the petitioner wants to plead that no gift deed was ever executed in favour of the respondent No.1 and the affidavit executed by Rattan Lal is of no consequence. Plaintiff is seeking to challenge the validity of the alleged gift made by his father. A stand is also being sought to be taken that the affidavit dated 26.01.2007 executed by plaintiff's father is neither legal nor valid.

5. An examination of the proposed amendment shows that the petitioner intends to set up a new plea, which is totally inconsistent with the stand taken in the plaint. In case the proposed amendment is allowed, the entire case set up by the plaintiff in his plaint, Annexure P1, would get displaced. Amendment of the plaint is not a matter of right. Petitioner has failed to show that despite due diligence, he could not bring such an amendment at an earlier stage. All that the petitioner has stated in the application, Annexure P2 is that these pleas were left out due to oversight. This cannot be accepted as a ground to allow the



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amendment in the pleadings.

6. It has been held by the Hon'ble Supreme Court in **Basavaraj Versus Indira and others (2024) 3 SCC 705** that an amendment, which fundamentally changes the nature and character of the case and causes prejudice to the other side cannot be permitted under Order 6 Rule 17 CPC. Hon'ble Supreme Court observed that the burden is on the parties seeking the amendment after the commencement of the trial, to show that in spite of due diligence such amendment could not be brought about earlier. Petitioner has failed to discharge the burden and the sole ground for amendment taken by him cannot be accepted.

7. There is no merit in the petition, which is dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

13.01.2025
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No