
(1999) 10 P&H CK 0150
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4633 of 1999

Daya Nand Sharma

APPELLANT

Vs

Sewa Singh and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2000) 124 PLR 444 : (2000) 2 RCR(Civil) 184

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Arvind Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—This is a revision against the order of Civil Judge, Senior Division, Kurukshetra, dated 21.8.1999 whereby he has refused to permit the plaintiff to introduce the plea of tenancy by way of amendment of the plaint.

Facts:

Daya Nand Sharma instituted suit for possession by way of pre-emption in the year 1989. In the plaint originally filed by him he sought to pre-empt the sale on account of being co-sharer. By way of amendment, he wanted to introduce the plea of tenancy for pre-empting the sale. He sought to incorporate this plea through an application for amendment of the plaint made under Order 6 Rule 17 read with section 151 C.P.C. in the year 1999.

2. It was alleged in this application that he forgot to take up the plea of tenancy in the plaint originally filed by him through inadvertence and oversight and he should be allowed to introduce this plea as he has been cultivating the suit land prior to sale at the time of sale and is still continuing cultivating the land as tenant and as tenant he has superior right to pre-empt the sale and so far as vendees are concerned, they are utter strangers to the land.

3. This application was opposed by the vendees urging that this amendment cannot be allowed now when limitation for pre-emption expired long ago and the introduction of this plea now would be prejudicial to their rights.

4. Vide the impugned order, Civil Judge, Senior Division, Kurukshetra declined this application and refused amendment of the plaint.

5. I have heard the learned counsel for the petitioner and have gone through the record.

6. Applicant (plaintiff) filed suit for pre-emption in the year 1989. He sought to preempt the sale on the sole ground of being co-sharer with the vendors. In the year 1999 through the proposed amendment, he wanted to introduce the plea that he has a right of pre-emption as being tenant. For pre-empting the sale, there is one year limitation Plaintiffs claim to pre-empt the sale became barred by time long ago and when this application for amendment was made, there was no limitation for pre-empting this sale. If the plaintiff is allowed to incorporate this plea through amendment, that would be prejudicially affecting the right of the vendees. No amendment of plaint can be allowed if because of lapse of time some right has vested in the other party and the effect of allowing amendment would tantamount to the taking away of that right. Allowing such amendment cannot be compensated for by costs. In Haryana, the law of pre-emption has been amended. Now sale is pre-emptible only by a tenant. Right of pre-emption inhering in other has taken away. It was held in A.J. Randhawa Supdg. Engineer (Retd.) Vs. State of Punjab and Others, that no amendment of the plaint can be allowed to be effected. If the effect of allowing amendment is to allow relief when allowing relief on that ground had become barred by limitation.

7. Right of pre-emption is a particle right inasmuch as right of pre-emption impinges upon the freedom of contract.

8. For the reasons given above, this revision fails and is dismissed.