

Neutral Citation No. - 2025:AHC:133434

Reserved On:28.07.2025

Delivered On:07.08.2025

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 9754 of 2016

Petitioner :- Jameel Ahmad

Respondent :- Waliuddin And Another

Counsel for Petitioner :- Tarun Agrawal

Counsel for Respondent :- ,Adarsh Bhushan,Rahul Mishra

Hon'ble Manish Kumar Nigam,J.

1. Heard Sri Tarun Agarwal, learned counsel for the petitioner and Sri Shashi Nandan, learned Senior Advocate assisted by Sri Ashok Kumar Srivastava, learned counsel for the respondents.

2. This petition has been filed challenging the order dated 16.05.2016 passed by Additional Civil Judge (Senior Division) Court No. 5, Meerut allowing the application for amendment moved by the plaintiff in the suit under Order 6 Rule 17 of C.P.C. for amending the plaint as well as order dated 10.11.2016 passed by District Judge, Meerut in Civil Revision No. 29 of 2016 filed by the defendant-petitioner challenging the order passed by the trial court dated 16.05.2016.

3. Brief facts of the case are that Original Suit No. 904 of 1991 was instituted by one Waliuddin against the petitioner for a decree of specific performance in favour of the plaintiff on the basis of an agreement to sell dated 22.09.1979 executed by the petitioner. During the pendency of the suit, an application for amendment was filed by the plaintiff-respondent and the same was allowed by the trial court by order dated 16.05.2016. The revision filed by the petitioner was dismissed by the District Judge by

order dated 10.11.2016 holding that the revision to be not maintainable. Hence the present writ petition.

4. It has been contended by counsel for the petitioner that by the proposed amendment, the plaintiff has changed the property for which the suit was filed and is now trying to substitute the property with other property and as such the said amendment cannot be allowed. It has also been contended by counsel for the petitioner that without their being any rectification in the agreement to sell, allegedly, executed by the petitioner, the plaintiff cannot be permitted to substitute the property as mentioned in the agreement with another property. Learned counsel for the petitioner relied upon Section 26 of the Specific Relief Act and also relied upon judgment of Apex Court in case of **Puran Ram Vs. Bhaguram and another** reported in (2008) 4 SCC 102.

5. During the pendency of this writ petition, the original plaintiff died and has been substituted by respondent Nos. 1/1 to 1/3.

6. The counsel appearing for the plaintiff-respondents contended that contention of learned counsel for the petitioner so far as substitution of a new property is concerned is incorrect. The agreement to sell was entered into between the parties regarding 8 bigha land being part of Khasra No. 236 area 30-1-0 situated at village Lakhwaya, Rasoolpur, Pargana, Tehsil and District- Meerut. By means of the amendment, the plaintiff has sought to correct the location of the property covered under the agreement. The plaintiff has claimed the same area i.e. 8 bigha of Khasra No. 236 which was also in the agreement to sell. It has been further contended by counsel for the respondent that the provisions of Section 26 of the Specific Relief Act will not apply as plaintiff has not sought any rectification in agreement to sell and therefore, the judgment relied upon by the petitioner will also be not applicable to the facts of the present case.

7. Further, it has been contended by counsel for the respondent that at the time of allowing an amendment application, the court can not go into the merits of the claim made through amendment in the plaint. The defendant will get a right to controvert the pleadings as amended by filing an additional written statement and no prejudice is caused to him in case, amendment is allowed. It has been further contended that for final adjudication of the dispute between the parties, if the amendment is required, the same can be allowed by the court at any stage of proceedings.

8. I have perused the order impugned as well as the documents annexed along with the writ petition. From the perusal of the plaint, it is apparent that the agreement to sell was executed regarding part (8 bigha of land) of Khasra No. 236 total area 30 bigha. By the amendment, the proposed amendment as claimed in paragraph No. 14-A is quoted as under:-

" , in respect of half share in Sixteen Bigha Pukhta, Minjumla Land, situated on the southern side of the entire land of Khasra No. 236, Total Area thirty Bigha, one Bhiswa, Zero Biswansi, leaving eighteen feet wide road on the eastern side, situated in Village Lakhwaya Rasoolpur, Paragana, Tehsil & District: Meerut,"

9. Thus it is apparent, at the best, it could be said that the location of the land is changed, if at all and rest of the parameters i.e. area, khasra number of the land remains same and therefore, it cannot be said that there is any change of property being brought by amendment in the pleadings by the plaintiff. Further after the amendment, the defendant will have a right to file additional written statement to controvert the amended pleadings and would also have an opportunity to lead evidence regarding the same and in my view, no prejudice is going to be caused to the defendant.

10. Judgment relied upon by the counsel for the petitioner in case of **Puran Ram Vs. Bhaguram and another (supra)** does not support the arguments of the petitioner, rather they are more in favour of the respondents. Paragraph Nos. 9, 10, 11, 12 and 13 of the judgment in case of Puran Ram Vs. Bhaguram and another (supra) are quoted as under:-

"9. Heard the learned counsel for the parties and examined the impugned order and the order of the trial court as well as the application for amendment of the plaint and other materials on record. After hearing the learned counsel for the parties and considering the nature of amendment sought for, we are not in agreement with the order passed by the High Court rejecting the application for amendment of the plaint. The learned counsel appearing on behalf of the appellant has contended that in view of the nature of amendment sought for in the plaint as well as in the agreement, the High Court was not justified in rejecting the prayer for amendment of the plaint and the agreement. He further contended that in view of Section 26 of the Specific Relief Act, 1963, it was open to the appellant to apply for amendment of the agreement for sale. The learned counsel for the appellant also contended that since the prayer for amendment of the plaint was only to correct a part of the description of the suit property in the agreement for sale as well as in the plaint, the court was not justified in rejecting the application for amendment of the plaint and the agreement. Further, by such amendment of the plaint, neither the nature and character of the suit would be changed nor the question of limitation could arise. According to the learned counsel for the appellant, the suit would remain a suit for specific performance of the contract for sale and only a part of the description of the suit property would be changed, as noted hereinafter, by way of such amendment.

10. The learned counsel appearing for the respondent, however, sought to argue that the amendment of the agreement, even so far as a part of the description of the suit property is concerned, cannot be allowed in a suit for specific performance of the contract for sale. According to him, Section 26 of the Specific Relief Act clearly expresses the intention that if the description of the suit property needs to be corrected, it can only be corrected by instituting a suit for correction or rectification of the deed. He has also drawn our attention to sub-section (4) of Section 26 and submitted that no relief for rectification of an instrument should be granted to any party under section 26 of the Act unless it has been specifically claimed. So far as the prayer for amendment of

the plaint is concerned, the learned counsel for the respondent contended that the prayer for amendment of the plaint would be barred by limitation as the agreement was entered into on 12th of April, 1991 and the amendment of the plaint was sought on 9th of May, 2003. Accordingly, neither the prayer for amendment of the agreement, nor the prayer for amendment of the plaint could be allowed even though the said amendment relates only to the change of a part of the description of the suit property.

11. Keeping the arguments advanced by the learned counsel for the parties in mind, let us now consider whether the prayer for amendment of the plaint and the agreement, in the facts and circumstances of the case, could be allowed or not. So far as the prayer for correcting or rectifying the agreement in respect of a part of the description of the suit property is concerned, it would be appropriate to look into the provisions made in Section 26 of the Specific Relief Act, 1963. Chapter 3 of the Specific Relief Act, 1963 specifically deals with rectification of instruments. Section 26 provides as to when an instrument may be rectified and reads as under: -

"26. When instrument may be rectified. #(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then-

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed;

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim."

12. After closely examining the provisions made under Section 26 of the Specific Relief Act, 1963, we do not find any difficulty to hold that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then-

"26 (1) (a) either party or his representative in interest may institute a suit to have the instrument rectified, or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

13. A reading of these two conditions made under Section 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended"

11. Further in paragraph No. 20 of the judgment in case of Puran Ram Vs. Bhaguram and another (supra), it has been held that allowing or rejecting an application for amendment for plaint is really the discretion of the court, which should not be likely interfered by the Higher Court unless the same is perverse. Paragraph No. 20 of the Puran Ram Vs. Bhaguram and another (supra) is quoted as under:-

"20.It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. In this connection reliance can be placed on a decision of this court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon [AIR 1969 SC 1267]. In paragraph 8 of the said decision this Court observed that:

"8. since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises; the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff on the date on which it was originally instituted."

A reading of this observation would amply clear the position that no question of limitation shall arise when mis- description of the name of the original plaintiff or mis-description of the suit property arose in a particular case. Apart from that in the present case, although, the relief claimed before as well as after the amendment remained the same i.e. a decree for specific performance of the contract for sale, even then, in the facts and circumstances of the present case, as noted herein earlier, we do not find why the High Court should have interfered with the discretion used by the trial court in allowing the application for amendment of the plaint."

12. I am of the considered opinion that no illegality has been committed by the courts below in allowing the amendment. Consequentially, the writ petition fails and is **dismissed**.

13. Since the suit is pending since 1991, it would be in the interest of justice that the suit itself may be decided by the trial court, expeditiously, preferably within a period of one year from the date of production of certified copy of this order after providing opportunity to the defendant to file additional written statement and providing further opportunity to both the parties to lead evidence, if any, in accordance with law.

Order Date: 07.08.2025

Nitika Sri.

(Manish Kumar Nigam,J.)