

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1715 of 2015.
Decided on:-11.03.2015.

Harpinder Singh and another

.....Petitioners.

Versus

Balbir Singh and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN
PARSOON.

Present:- Mr. Vijay Sharma, Advocate,
for the petitioners.

Dr. Bharat Bhushan Parsoon, J (Oral)

A suit seeking decree of possession by way of specific performance of the agreement to sell dated 31.10.2008 filed by plaintiff Balbir Singh, respondent herein, is pending adjudication in the court below. Defendants Harpinder Singh and Ravinder Singh i.e. defendants No.2 and 3 in the court below, petitioners herein, were resisting the suit.

2. Order dated 26.02.2015 vide which application for amendment of the plaint has been allowed by the court below, is under challenge in this revision petition on the ground that neither there was due diligence nor the same had merit and in this respect, he has cited ***Ajendraprasadji N. Pande & Anr. Versus Swami Keshavprakeshdasji N. & Ors. 2007(1) RCR Civil 481***. It is urged that amendment in pleadings should not have been allowed, when no case for showing of due diligence was made out. Reference to para

52 of the judgment has been made, whereby Hon'ble Apex Court has observed that plea of due diligence had not even been taken in the pleadings. Consequently, the court had come to the conclusion that in the interest of justice, the amendment sought for should not have been allowed.

3. Dealing with this matter at a sufficient length and also considering the effect of proviso added to Rule 17 of Order VI CPC, the court below had considered the law cited in the reply to the application under Order VI Rule 17 CPC at a considerable length. Perusal of the impugned order as also the pleadings of the parties reveal that the petitioners were impleaded as defendants subsequent to their purchase of the property during pendency of the suit. Sale deed in their favour from the original defendant Baldev Singh is of 31.05.2011.

4. Perusal of the application for amendment filed by the plaintiff in the interface of replication filed by him to the written statement of subsequent vendees i.e. defendants No.2 and 3, reveals that there is neither lack of bona fides nor of due diligence on the part of the plaintiff. In fact neither any new case is being set up nor any surprise is being sprung on the defendants by amendments in the plaint.

5. Rather, the plea added in the plea is a natural consequence of sale of the suit property during the pendency of the suit by defendant No.1 to defendants No.2 and 3 on 31.05.2011 without getting any permission from the court. In short, the sale deed in favour of defendants No.2 and 3 has been challenged as hit by the principle of lis pendence etc. in the amended plaint.

6. The court below was right in coming to a definite conclusion that the amendment sought for rather is only clarificatory in nature and thus is of formal nature. Introduced to avoid the technicalities of law, it is also specifically mentioned that no *denovo* trial would be required as the plaintiff

is not to lead any further evidence on the amendment introduced in the plaint. The court has also observed that the amendment is necessary for just decision of the case.

7. When the proliferation of litigation is to be stopped, allowing of amendment of the pleadings is a wise step on the part of the lower court and should not be taken to be regressive mode. Neither nature of the suit is altered nor new cause of action arises. As already mentioned even due diligence in para 10 of the impugned order in this context, is appended as below:-

“It cannot be said that the plaintiff was not diligent to assert the proposed amendment earlier as the plaintiff in his replication to the written statement filed by the defendant nos. 2 and 3 has already taken the objections as sought by him in the present amendment application”.

8. At this stage, it is worth reproducing para 11 and 12 of the impugned order as under:-

“The said amendment on the face appears to be necessary for the proper adjudication of the case and to clarify the whole legal proposition in question. The whole amendment so sought by plaintiff is completely formal in nature and same shall not alter the nature of the suit.

In view of the above discussion, I am of the opinion that the amendment of the plaint as asked by the plaintiff is of formal nature to avoid the technicalities of law. Further, the same shall also not lead to the denovo trial as the plaintiff himself has asserted that he does not want to lead any evidence in respect of the pleas taken vide the proposed amendments. The “inconvenience caused to the defendant can be met out through the compensation. Thus, in the interest of justice and to facilitate the proper adjudication of the case, the present application is allowed subject to cost of Rs.1000/-”

Reading of these paragraphs of the impugned order shows that the lower court considering the attending facts and circumstances as also the

law on the points, had reached to a correct conclusion, whereby application was allowed for amendment of the plaint. There is neither any factual or legal infirmity to interfere with the same.

9. The present petition is hence dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

March 11, 2015
prince rana