

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGRH

CR No. 1835 of 2014(O&M)
Date of decision: 7.12.2015

Mahipal Singh

.....Petitioner

versus

Papu Rana and others

.....Respondents

Coram: Hon'ble Mr. Justice Amit Rawal

Present: Mr. Vikas P. Singh, Advocate for the petitioner.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.(Oral)

Petitioner-plaintiff is aggrieved of the impugned order whereby application seeking amendment of the plaint has been dismissed on the ground that it tantamounts to withdrawal of the admission.

Learned counsel appearing on behalf of the petitioner submits that application has been dismissed on the ground that it tantamounts to withdrawal of the admission whereby specific fact has been pleaded in the plaint that it was filed at the initial stage and issues had not been framed. He further submits that specific allegations were attributed against lawyer who had initially filed the suit and intentionally pleaded wrong facts which tantamounts to condoning the period of limitation seeking enforcement of

agreement earlier entered by the plaintiff with him.

This fact has not been noticed by the Court below while dismissing the application.

There is no representation on the other side. The respondents have been served and it has been noticed by this Court on 20.1.2015. Accordingly, I proceed to dispose of the revision petition on merits.

I have heard learned counsel for the petitioner and appraised the paper book.

Paras 2 to 6 of the application seeking amendment of the plaint, read as under:

- 2) "That applicant/plaintiff has engaged Shri Vikram Singh Tanwar, Advocate for filing the above noted suit and he has drafted the plaint and suit has been filed by his junior Shri Devender Singh, Advocate.
- 3) That Shri Vikram Singh Tanwar, Advocate has mentioned in para no.6 of the plaint that one agreement of sale has been taken place between plaintiff and him and also mentioned that the possession of the land measuring 02 kanals 04 marlas was also given to him and since then he is continuing in possession of the aforesaid land. It has also mentioned in this para that plaintiffs and his brothers are in possession of 1200 sq. yds of land.
- 4) That plaintiff and his brothers are owners in possession of land measuring 05 kanals 9 marlas. The story put forth in para no.6 of the plaint has been wrongly mentioned by Shri Vikram Singh Tanwar, Advocate, just to condone the delay of agreement earlier entered by the plaintiff with him. Fact of the matter is that the agreement dated 3.2.1981 has been cancelled and the earnest money paid by Shri Vikram Singh was forfeited. Thereafter, no legal proceeding was initiated by plaintiff and Shri Vikram Singh Tanwar, Advocate.
- 5) That when plaintiff has changed his Advocate in this case then

he has come to know that there is a admission of cancelled agreement in the plaint and his counsel had advised the plaintiff that the suit is required to be amended.

6) That plaintiff wants to delete the words mentioned in the para no.6 at page no.5, in line No.3 from I have delivered the actual possession to Sh.Vikram Singh and continuing as such. to second last line of this para towards continuing the use as such and want to add the following lines that for not paying the remaining amount of Rs.5000/- the agreement between the plaintiff and Sh.Vikram Singh Tanwar, Advocate has been cancelled and the amount paid by Sh.Vikram Singh Tanwar has been forfeited as per compromise. Plaintiff and his brothers are in possession of 05 Kanals 09 Marlas of the total land out of which a house is their on 1200 sq. yards and remaining land was either open or surrounded by boundary wall on which plaintiff and his brothers are having possession. Similarly these words are also mentioned in para no.5 of the application under Order 39 Rules 1 and 2 read with Section 151 CPC. The plaintiff also wants to delete the lines and words of the suit in the application under Order 39 Rules 1 and 2 and wants to add the proposed amendment in the said application also. Plaintiff also wants to delete the aforesaid line in para no.5 of affidavit and wants to add the proposed amount in the affidavit.”

After going through the aforesaid pleadings made in the application seeking amendment by causing averment that the lawyer with whom agreement entered had managed to file suit by his junior Sh.Devinder Singh, I am of the view that amendment sought to be incorporated is most innocuous, in case not allowed to incorporate it would actually and adversely affect the right and interest. Such type of amendment should not be thrown/declined at initial stage particularly when there is a plausible explanation as noticed above. In my view, no prejudice would be caused as

the suit is at initial stage. Accordingly, the impugned order is set aside and the application under Order 6 Rule 17 CPC is allowed. The petitioner-plaintiff is allowed to cause amendment in the plaint.

The revision petition stands allowed.

7.12.2015
Meenu

(AMIT RAWAL)
JUDGE