

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2075 of 2014 (O&M)

Date of decision: 28.04.2015

Jagdeep Singh

... Petitioner

versus

Mohinder Singh Gill and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Bahl, Senior Advocate,
with Mr. Ramandeep Singh, Advocate,
for the petitioner.

Mr. Kanwaljit Singh, Senior Advocate,
with Mr. Vikram Gupta, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision is against the order allowing an amendment in the plaint brought 7 ½ years after its institution. The grievance is that the plaintiff had made reference to a transaction of sale dated 25.04.1997 as brought about by the 2nd defendant through a power of attorney executed in her favour on 11.02.1997. The defence was that the decree obtained against the defendants by the contesting defendant, who is the petitioner here, cannot be assailed and the sale

relied on by the plaintiff was not true. At the time of trial, it appears that even apart from the sale deed dated 25.04.1997, the plaintiff gave evidence with reference to yet another document purported to have been executed by the 2nd defendant on 20.03.1997 and exhibited the sale deed also as evidence. An opposition was taken by the petitioner-defendant that it was beyond the pleadings but the court had allowed the cross-examination of the witness through whom the reference to the sale deed dated 20.03.1997 was made. After the plaintiff's side was closed on 01.03.2012 and when the defendant's side began on 01.05.2012, the plaintiff has moved an amendment making reference to alleged earlier sale deed dated 20.03.1997. The objection taken was that this fact, if it was true, was very well within the knowledge of the plaintiff and there had been a deliberate omission to make reference to the same in the plaint. It was the contention that the document dated 20.03.1997 contains some inherent fallabilities that showed the alleged fabricated nature of the transaction and hence, the plaintiff, who had omitted to make reference of the same, cannot be permitted to bring an amendment after the institution of trial. The objection of the defendant was rejected and the court allowed for the amendment to be brought on record.

2. The objection of the defendant, as culled out earlier in his narration, is reiterated by the senior counsel and would also

submit that the cross-examination of some of the witnesses would require to be undertaken again, for, the defendant was previously taking up position that the reference to document dated 20.03.1997 was beyond pleadings and, therefore, the entire details of the document and the suspicious circumstances relating to its genuineness could not have been confronted to the witnesses. I asked the senior counsel for the respondent whether the respondent-plaintiff would require any further evidence on the basis of the amendment. The counsel points out to me that although there was lack of reference to the sale deed dated 20.03.1997 in the plaint, the document had been filed in court and the cross-examination has also been done of the plaintiff's witness by the defendant. The only difficulty expressed was that the party, who had tendered the document, is living abroad and securing his presence in person could be difficult.

3. Normally, the evidence follows the pleadings and not vice-versa. It should have been absolutely essential that the pleadings regarding the sale dated 20.03.1997 ought to have been made, for, that would surely a fact which was within the knowledge of the plaintiff when he instituted the suit. Going by the strict application of Order 6 Rule 17 CPC, such an amendment could not have been allowed but perhaps the trial Court was impressed by the fact that there was already evidence available with reference to the

document and even the document had been brought on record and exhibited as an evidence. There were surely therefore exceptional circumstances which the court had to confront and had exercised the discretion to allow for the amendment. This court's intervention under Article 227 of the Constitution shall be restricted only to the orders which are illegal and if there is even an improper order but would not cause any serious prejudice, I would let that go and will not subject it to any intervention.

4. Under the circumstances, I maintain the order passed already and will give liberty to the petitioner-defendant to recall any of the witnesses of the plaintiff's side only if it is necessary in so far as the defence relating to the transaction of alleged sale dated 20.03.1997. The plaintiff either himself or his witnesses will offer no evidence in chief examination. If the witness is in foreign country, the defendant may move an appropriate application for examination through video conferencing and the court will entertain such a plea after eliciting a proper place to give evidence that will be under the control of a public authority either of USA or by the Indian Consulate established in foreign country. The plaintiff himself will undertake all the expenses that are necessary for making possible such an examination for video conferencing, if the imperative of such evidence becomes relevant for conclusion of trial of the case. For the inconvenience to the defendant by belated

pleadings, even while maintaining the order, I impose a cost of ₹25,000/- on the plaintiff to be paid to the contesting defendant within a period of 4 weeks.

5. The revision petition is dismissed but with the above observations.

(K.KANNAN)
JUDGE

28.04.2015
sanjeev