

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

CR No. 2573 of 2015 (O&M)

Date of decision: 10.4.2015

Jan Mohammad (deceased) through LRs

.. Petitioner

versus

Surinder Pal and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Pankaj Jain, Advocate for the petitioner.

Rajesh Bindal, J.

Challenge in the present petition is to the order dated 11.2.2015 (Annexure P-5), whereby the application for amendment of the written statement filed by the petitioner was dismissed.

It is a case filed by respondent nos. 1 and 2 for possession by way of specific performance of agreement to sell against Jan Mohammad. Jan Mohammad died in the year 2010. After his death, during the pendency of the suit, his sons Mohammad Rafi and Mohammad Salim, were brought on record as LRs. They filed the written statement in the suit as during his life time deceased Jan Mohammad had not filed the same. A plea was taken in the written statement that the agreement to sell, on the basis of which the suit for possession was filed, was not executed by Jan Mohammad deceased. After the death of one of the LR, namely, Mohammad Rafi, application for amendment of written statement was filed by his LRs to admit the execution of the agreement to sell, as the same was admitted in separate collateral proceedings pertaining to dispute regarding the suit property amongst the collateral. The application having been dismissed by the learned court below, the present petition has been filed.

Learned counsel for the petitioner submitted that admission of execution of agreement to sell in the amended written statement will shorten the litigation in the suit filed by respondent nos. 1 and 2 as the claim is for possession by way of specific performance of agreement to sell. The

petitioner had already admitted this fact in other proceedings pertaining to the suit property amongst the collateral. Hence, the amendment should have been allowed.

After hearing learned counsel for the petitioner, I do not find any merit in the submissions made.

The written statement had already been filed by the petitioner and a specific stand had been taken regarding non execution of agreement to sell. The successors cannot be permitted to take a different stand. In fact, the amendment is sought to be made in the written statement filed by the petitioner after the plaintiffs had already led evidence in support of their plea regarding the agreement to sell and proved on record the other litigation where the petitioner had admitted the execution of agreement to sell.

Considering the aforesaid facts, in my opinion, the learned court below has not committed any error in dismissing the application filed by the successors of the petitioner seeking amendment of the written statement.

Dismissed.

10.4.2015
vs

(Rajesh Bindal)
Judge