

CR No. 2301 of 2014

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

CR No. 2301 of 2014

Date of Decision: December 10, 2015

Arbinder Pal Singh

.... Petitioner

vs.

Joginder Kaur & others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. G. S. Sirphikhi, Advocate
for the petitioner.

Mr. Baldev Raj Mahajan, Sr. Advocate with
Mr. Abhishek Vyas, Advocate
for respondent No.2.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

This revision is filed against the order dated 26.02.2014
(Annexure P-5) passed by learned Additional Civil Judge(Sr. Divn.),
Batala vide which an application of the plaintiff under Order 6 Rule 17
read with Section 151 CPC for amendment of the plaint and seeking

the relief for specific performance regarding property mentioned in the Schedule B in addition to the relief already mentioned in the head note of the plaint, was dismissed on the ground that the oral agreement is alleged to have been executed in the year 1980. The suit was instituted on 27.10.2005 and that no reasonable explanation has been given while waiting about 08 years. The lower court also observed that case is now fixed for arguments. Hence, the amendment at the said stage was disallowed.

It comes out that as per the copy of the plaint annexed with the present revision, plaintiff had filed a suit for declaration to the effect that he is owner in possession of the property mentioned in the schedule (A) and (B) while defendant No.3 is the owner in possession while property mentioned in Schedule C. Further declaration is sought that defendant No.1 has got no right to proceed with the partition application pending in the Court of Assistant Collector, 1st Grade Batala. The suit was filed on 27.10.2005. It was pleaded in the suit that the property of Niranjana Singh father of the parties, was succeeded by plaintiff/defendant Nos.2 and 3 as his sons, defendant No.1 as his daughter and Avtar Kaur as his widow. Vide agreement dated 10.07.1980, which is stated to be oral one, the defendant No.1 and Smt. Avtar Kaur sold their share in favour of the plaintiff and defendant Nos.2 and 3, who executed a memorandum of family partition and part payments of the

amounts were adjusted as per the memorandum of family partition. After the execution of said four agreements dated 13.09.1980, plaintiff and defendants no. 2 & 3 became full fledged owners in possession of the property mentioned above. It is stated that it was mutually agreed between the parties and that defendant No.1 and Smt. Avtar Kaur will be entitled to the remaining amount of Rs. 10,550/- as per agreement referred above. Defendant No.1 and Smt. Avtar Kaur signed and thumb marked the agreement dated 10.07.1980. Smt. Avtar Kaur expired on or about 02.06.1982 leaving behind the plaintiff and defendant Nos. 1 to 3 as her legal heirs. After her death the amount due was payable by the plaintiff and defendant No.2 to defendant No.1, which comes to Rs. 4400/-. It was further pleaded that Smt. Avtar Kaur and defendant No.1 had surrendered the possession to the plaintiff and defendant nos. 2 and 3 on 10.07.1980 as owner. Defendant No.2 sold the property mentioned in the schedule (B) in favour of the plaintiff for a sum of Rs.85000/- and received the entire amount vide receipt dated 04.05.1992 and delivered the actual physical possession to the plaintiff.

By way of the present amendment, plaintiff wants to seek specific performance directing defendant No.2 to specifically perform the contract effected by an oral agreement entered into by defendant No.2 by transferring the land in Schedule (B) by executing a legal and proper document and sale deed of the said land. Following para

is sought to be added:-

“The defendant No.2 had agreed to sell the property mentioned in schedule (B) of the heading of the plaint by an oral agreement and received the entire sale consideration as mentioned above and the defendant No.2 had agreed to execute and registered the sale deed in favour of the plaintiff as and when the plaintiff will so desire. The defendant No.2 was asked to execute and register the sale deed in favour of the plaintiff. The plaintiff was and is ready and willing to perform his part of the contract; hence the plaintiff is entitled to the relief of specific performance qua the property mentioned in schedule (B) of the heading of the plaint.”

In addition to this the para regarding valuation is sought to be added and in the relief clause the prayer for specific performance sought to be added.

I have heard learned counsel for the parties and have gone through the case file very carefully.

It comes out that the present application was filed on 24.02.2014 and the original suit was filed in the year 2005 which means that the present application was filed after about nine years. The main suit is now pending for rebuttal and arguments which effectively means that it is pending for arguments. It is alleged that

initially contesting defendant had not appeared but later on he was allowed to join the proceedings. Thereafter, he led the evidence and thereafter the case was fixed for rebuttal and arguments.

It is contended on behalf of the plaintiff/appellant that contesting defendant has not led any evidence. As per the plaint, plaintiff claims that defendant No.2 sold the property mentioning in Schedule (B) vide receipt dated dated 04.05.1992. In this way the above mentioned property was sold on 04.05.1992. There is no mention as to whether there were any term and condition in the receipt dated 04.05.1992. Admittedly, through a unregistered receipt the property cannot be sold. The suit was filed in the year 2005 when the cause of action was available to the plaintiff. However, nine year later, the present application was filed. Even in the amendment Para No.5 wherein, in place of receipt dated 04.05.1992, it is sought to be alleged that oral agreement was there. No date of oral agreement is mentioned. No terms and conditions of said agreement are sought to be enumerated in the said para. It shows that the amendment is otherwise vague. By way of amendment, plaintiff wants to take a completely contradictory stand and in place of sale now he wants to allege that it was oral agreement of sale.

Therefore, it comes out that when the suit was filed in the year 2005, the ground on which the amendment is sought, was available. Secondly, when the suit is at the fag end, the said

application for amendment was filed after nine years of the filing of the suit. Thirdly, the amendment sought for is contradictory with the pleading in the main case and is also vague. As such the amendment was rightly refused by the lower Court.

Learned counsel for the petitioner has referred to the authorities of *M/s Allahabad Law Journal Co. Ltd. Vs. M/s Skyways Construction Corporation and others, AIR 1992 Delhi 9, A. K. Gupta and Sons Ltd. Vs. Damodar Valley Corporation, AIR 1967 Supreme Court 96(V 54 C 16), Pankaja and another Vs. Yellappa (dead) by LRs and others (2004) 6 Supreme Court Cases 415, Puran Ram Vs. Bhaguram & another, AIR 2008 Supreme Court 1960, Deepali Vs. Pankaj Gupta 2006(4) RCR Civil 684, Gaimukh Deosthan, A Private Trust Vs. Yogesh S/o Ishwarprasad Pande & ors 2011(4) Civil Court Cases 092 (Bombay), J. C. Rudrasharma Vs H. K. Subramanyam, Since dead by his L.R Sri Srinivas and others, 1996 A I H C 1659 and Waheeda Begum & others Vs. Md. Yakub & others, 2014(3) Civil Court Cases 029 (A.P.).*

It comes out that Order 6 Rule 17 CPC was amended in the year 2002 wherein the distinction was made between amendment of the pleading before the trial has started and amendment of pleading after the trial has started. It is not the law that at any stage and without any sufficient cause, the amendment should be

allowed . The facts of the present case as discussed above are clearly distinguishable.

Another authority title **Abdul & others versus Mohd. 2007, Supreme Court Cases, 548** is also distinguishable as in the said case the amendment was sought at the very threshold whereas, in the present case, the ground was available when the suit was filed but the amendment was sought after nine years when the case is at the fag end.

No ground is made out to allow the present revision.

The revision stands dismissed accordingly.

December 10, 2015
rimpal

(KULDIP SINGH)
JUDGE