

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

CR No.2923 of 2014 (O&M)
Date of decision: 22.7.2015

S. Sukhwinder Singh

..... Petitioner

Versus

Smt. Veena Rani and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Bikramjit Arora, Advocate, for the petitioner.

Mr. Sachin Sharma, Advocate, for respondent No.1.

Mr. B.S. Bhalla, Advocate, for respondent No.2.

Mr. Ashish Aggarwal, Advocate, for respondent No.3.

RAJESH BINDAL, J

The petitioner/plaintiff has approached this Court impugning the order dated 9.4.2014 passed by the learned court below, whereby the application filed by him for amendment of the plaint was dismissed.

The petitioner had filed a suit for possession by way of specific performance of agreement to sell. Learned counsel for the petitioner/plaintiff submitted that defendant No.1-Veena Rani is the owner of the land. She had executed a power of attorney in favour of defendant No.2-Pritpal Singh, who as a attorney holder entered into an agreement to sell pertaining to the land in dispute with the petitioner on 3.11.2005. The last date fixed for registration of sale deed was 2.2.2006. The vendor or the attorney having failed to get the sale deed registered, the suit for possession by way of specific performance of agreement to sell was filed on 24.3.2006, in which status quo was granted on 27.3.2006. Despite this fact, defendant No.1-Veena Rani got the sale deed registered in favour of defendant No.2-Pritpal Singh. Subsequent thereto, defendant No.2-Pritpal Singh sold the property to defendants No.3 and 4, namely, Simmi Sarin and Bhupinder

Marwah vide registered sale deeds dated 30.5.2007 of 3/4th and 1/4th share, respectively. Having come to know about this fact, the petitioner filed application under Order 1 Rule 10 CPC for impleading the subsequent vendees, namely, defendants No.3 and 4 (Simmi Sarin and Bhupinder Marwah) as defendants in the suit, which was allowed. The amended plaint was filed, in which inadvertently, the date of sale deed executed by defendant No.1-Veena Rani in favour of defendant No.2-Pritpal Singh was wrongly mentioned as 15.2.2006 instead of 15.9.2006 and pertaining to sale deed of 3/4th share by defendant No.2 in favour of defendant No.3, the date of sale deed was wrongly mentioned as 27.3.2006 instead of 30.5.2007. When the aforesaid mistake came to the knowledge of the petitioner, application for amendment of the plaint was filed on 22.1.2014. The petitioner/plaintiff has already concluded his evidence and is not required to lead any further evidence. Only formal amendment is to be made in the pleadings by correcting the wrong dates. He further submitted that defendants No.3 and 4 (Simmi Sarin and Bhupinder Marwah) were ex-parte before the learned court below. No prejudice will be caused as such to the defendants as the parties have contested the case knowing well the case set up by the plaintiff. There is no sale deed dated 27.3.2006 on record. The courts are always liberal in granting prayer for amendment of pleadings. The parties should not be made to suffer on account of fault of their counsel. There is no intention to delay the proceedings, as the petitioner himself is a sufferer. In support of his plea, reliance was placed on the judgment of this Court in Anant Ram v. Hans Raj and others 2012 (5) RCR (Civil) 609.

On the other hand, learned counsel for respondent No.3 submitted that the amended plaint was filed by the petitioner in March 2009 to which the defendant No.2 filed written statement dated 10.3.2010 and defendants No.3 and 4 filed written statement on 22.2.2011. In the written statement filed by respondents No.3 and 4, they had specifically pleaded that property in question was purchased by them from defendant No.2 vide registered sale deed dated 30.5.2007. It was specifically stated that no sale deed was registered on 27.3.2006 in favour of defendant No.3 by defendant No.2 for 3/4th share in the property. Even in the evidence led by the petitioner, the aforesaid facts were specifically confronted to the petitioner, who appeared

as PW2 and to PW1-Davinder Singh, one of the witnesses to the agreement to sell, but still no steps were taken by the petitioner to do the needful. Though it was specifically admitted by them that there exists no sale deed dated 15.2.2006 or 27.3.2006.

Learned counsel for respondent No.1 submitted that after the amendment in CPC, amendment in pleadings could be allowed before the commencement of trial. However, after the commencement of trial amendment cannot be allowed, unless the court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of trial. The fact of due diligence has to be pleaded by the party seeking amendment in pleadings and the court is only to examine the plea and in case it is found to be bonafide, the amendment could be allowed after the trial had commenced. It was further submitted that in case now the suit is filed impugning the sale deed dated 30.5.2007, the same would be timed barred. There is no plea raised by the petitioner in the application for amendment that the mistake is typographical or inadvertent on account of fault of the counsel. Due diligence has also not been pleaded. In paras No.7 and 8 of the application seeking amendment, only plea raised is that the same is not going to change the nature of the suit. The amendment is formal in nature and the defendants will not suffer any prejudice. In support of his plea, reliance was placed upon judgments of Hon'ble the Supreme Court in J. Samuel and others v. Gattu Mahesh and others 2012 (1) RCR (Civil) 903 and Rajkumar Gurawara (Dead) thr. LRs v. M/s S.K. Sarwagi & Co. Pvt. Ltd. and another 2008 (4) RCR (Civil) 824 and the judgments of this Court in Amar Ujala Publications v. Rajiv Prashar 2010 (4) CivCC 620, Inder Pal Singh v. Bankey Bihari 2003 (4) RCR (Civil) 210, Sunil and others v. Jai Prakash and another 2013 (2) CivCC 105 and Paal Kaur v. M/s Dhamotia & Company Property Dealers and others 2013 (1) CivCC 155.

Learned counsel for the respondent No.2 while adopting the submissions made by respondents No.1 and 3 submitted that the defendants filed written statement to the plaint. The petitioner/plaintiff came to know regarding mentioning of wrong facts in the plaint as those had been specifically pointed out. Thereafter, even in the evidence, this fact had

specifically been put to the witnesses of the plaintiff including the plaintiff, still no steps were taken. The case is now at the stage of rebuttal evidence, if any and arguments. Considering the conduct of the petitioner, he cannot be permitted to plead that the amendment sought should be allowed at this stage, the same being formal or otherwise. There is no illegality in the order passed by the learned court below. The parties had led their evidence keeping in view the pleadings. The petitioner may not be interested in leading further evidence, but the defendants may require considering the change in the pleadings.

Heard learned counsel for the parties and perused the paper book.

To clarify certain facts, which are not available in the paper book, the record from the learned court below was also summoned.

In the case in hand, the petitioner/plaintiff filed a suit for possession by way of specific performance of agreement to sell pleading that defendant No.2-Pritpal Singh had entered into an agreement to sell dated 3.11.2005 on behalf of Veena Rani as her attorney. The last date fixed for registration of sale deed was 2.2.2006. The suit was filed on 24.3.2006. On 15.9.2006, Veena Rani executed sale of the property in favour of Pritpal Singh. Defendant No.2-Pritpal Singh sold the property in question to defendants No.3 and 4, namely, Simmi Sarin and Bhupinder Marwah vide registered sale deed dated 30.5.2007 for 3/4th and 1/4th share, respectively.

At this stage, the petitioner/plaintiff filed application dated 18.9.2007 under Order 1 Rule 10 CPC dated 18.9.2007 pleading that Veena Rani had sold the property to Pritpal Singh vide sale deed dated 15.9.2006 and thereafter, Pritpal Singh had sold the same to Simmi Sarin and Bhupinder Marwah for 3/4th and 1/4th share, respectively vide sale deed dated 30.5.2007. Prayer made in the application dated 18.9.2007 is extracted below:-

“It is, therefore, prayed that aforesaid Smt. Simmi Sarin w/o Sh. Rajesh Sarin r/o 26-A, Krishna Square-I, Amritsar and Sh. Bhupinder Marwah s/o Late Sh. Vishwa Mitter r/o 26, Ideal Lane, court Road, Amritsar, may kindly be impleaded as defendant nos.3 and 4 in the interest of justice and equity and for the just decision of the case.”

A perusal of the record of the court below shows that application under Order 1 Rule 10 CPC seeking to implead Simmi Sarin and Bhupinder Marwah, defendants No.3 and 4 in the suit was allowed vide order dated 12.12.2008. Amended plaint dated 20.3.2009 was filed, in which pleadings regarding sale deed dated 15.2.2006, 27.3.2006 and 30.5.2007 were added. The prayer was also made for declaring the aforesaid sale deeds to be illegal, null and void. There is nothing on record to suggest that any application for amendment of the plaint was filed at that stage, but still amended plaint adding pleadings and prayer was filed and taken on record.

Written statement to the amended plaint was filed by the defendants. In his written statement dated 10.3.2010 defendant No.2-Pritpal Singh claimed that Veena Rani executed a receipt and power of attorney in his favour after receiving ₹ 12,00,000/- from him. Even possession of the suit property was also delivered to him but she refused to execute the sale deed. On the basis of terms settled with Veena Rani, Pritpal Singh entered into an agreement to sell pertaining to the property in dispute with the plaintiff. The last date fixed for registration of sale deed was 2.2.2006. The plaintiff did not appear before the Sub Registrar on the designated date. Hence, he being not ready and willing to get the sale deed registered, the agreement to sell stood cancelled. Defendant No.2-Pritpal Singh appeared before the Sub Registrar and got his presence marked. Veena Rani in connivance with the plaintiff got the power of attorney executed by her in favour of Pritpal Singh cancelled on 7.2.2006. Pritpal Singh made a complaint before the police and FIR No.104 dated 10.4.2006 was registered against Veena Rani, her husband-Gulzari Lal, plaintiff-Sukhwinder Singh and one Davinder Singh. They moved application for pre-arrest bail before this court. The same was allowed with the condition that Veena Rani will get the sale deed registered in favour of Pritpal Singh. It was in terms of the aforesaid order that Veena Rani got the sale deed registered in favour of Pritpal Singh on 15.9.2006.

It is specifically stated in the written statement that date of sale deed executed by Veena Rani in favour of Pritpal Singh is 15.9.2006 and not 15.2.2006 as was pleaded by the plaintiff in the amended plaint.

It was further pleaded by defendant No.2 in the written statement

that defendant No.2 sold the property in question to Simmi Sarin and Bhupinder Marwah.

In the written statement filed by defendants No.3 and 4, the buyers of the property from Pritpal Singh, it was specifically pleaded that they had purchased the suit property from Pritpal Singh vide registered sale deed dated 30.5.2007. Their share being $\frac{3}{4}$ th and $\frac{1}{4}$ th, respectively. It was specifically stated that no sale deed was got registered by Pritpal Singh in favour of Simmi Sarin on 27.3.2006 for $\frac{3}{4}$ th share of property as is alleged in the amended plaint nor there is any sale deed dated 30.5.2007 pertaining to $\frac{1}{4}$ th share of the property in favour of defendant No.4-Bhupinder Marwah.

In his affidavit dated 11.10.2013, filed in examination-in-chief (Ex.PW2/A), the petitioner/plaintiff reiterated what he had stated in the amended plaint, namely, that the sale deed was got registered by defendant No.1-Veena Rani in favour of defendant No.2-Pritpal Singh on 15.2.2006 and further that defendant No.2-Pritpal Singh had sold $\frac{3}{4}$ th share of the property in question to defendant No.3-Simmi Sarin on 27.3.3006 and $\frac{1}{4}$ th share to defendant No.4 vide sale deed dated 30.5.2007. Para 2 of the affidavit is extracted below:-

“That I have come to know that the defendant No.1 has sold the property in question in favour of defendant no.2 vide sale deed dated 15.2.2006 in violation of the agreement to sell entered into between me and the defendant No.1 through defendant no.2. I have also come to know that the defendant no.2 has further sold the property in question to the extent of $\frac{3}{4}$ th share in favour of defendant no.3 vide alleged sale deed dated 27.3.2006 and to the extent of $\frac{1}{4}$ th share in favour of defendant no.4 vide alleged sale deed dated 30.5.2007. All these sale deeds are illegal, null and void and do not confer any right, title or interest either in favour of defendant no.2 or in favour of defendants nos.3 and 4.”

In his cross-examination, the petitioner/plaintiff admitted that Pritpal Singh had sold property to Simmi Sarin vide sale deed dated 30.5.2007. He admitted that the suit was filed by him on the basis of sale

deed dated 15.2.2006 executed by defendant No.1 in favour of defendant No.2. He further admitted that he had challenged the sale deed dated 27.3.2006 executed by defendant No.2 in favour of defendant No.3 and the sale deed dated 30.5.2007 executed in favour of defendant No.4.

Davinder Singh, proprietor of Sacha Sodha Property Dealer who appearing as PW1, was cross-examined by defendants no.3 and 4, wherein he admitted that the sale deeds in favour of defendants No.3 and 4 are dated 30.5.2007 and there is no sale deed 27.3.2006.

When the case was at the stage of rebuttal evidence, if any and argument, application dated 22.1.2014 seeking to amend the plaint was filed by the petitioner. The fact regarding execution of sale deed in favour of defendants No.3 and 4 was sought to be corrected and further amendment was sought pertaining to sale deed dated 15.9.2006 executed by defendant No.1 in favour of defendant No.2, which according to the plaintiff was wrongly mentioned as 15.2.2006. The grounds made out for seeking amendment in the plaint, as set out in the application, are extracted below:-

“7. That the proposed amendment is of formal nature and is not going to change the nature of the case and no evidence is to be led if the proposed amendment is allowed.

8. That the proposed amendment is very much necessary for proper and effective decision of the case and no prejudice would be caused to the defendants if the proposed amendment is allowed.”

The application for amendment was contested by the defendants. The same was dismissed by the learned court below vide impugned order dated 9.4.2014. Order 6 Rule 17 CPC as has amended w.e.f. 1.7.2002 provides that the court may at any stage of proceedings allow either party to amend the pleadings as may be necessary for the purpose of determining real question in controversy. It is further provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

There is no dispute in the proposition of law that trial commenced with the framing of issues. (Reference can be made to the judgment of

Hon'ble the Supreme Court in Ajendraprasadji N. Pande and another v. Swami Keshavprakeshdasji N. and others 2007 (1) RCR 481). In the case in hand, the issues were framed on 23.8.2013. The parties led their evidence. When the application seeking amendment of the plaint was filed, the suit was at the stage of rebuttal evidence, if any and arguments.

It is important to note that the petitioner/plaintiff in the present case is not illiterate, rather an educated person. Though his qualifications as such are not on record, but the manner, he had signed, clearly establishes that fact.

The term "due diligence" was considered by Hon'ble the Supreme Court in Chander Kanta Bansal v. Rajinder Singh Anand 2008 (5) SCC 117 and it was opined that diligence means careful and steady in application to one's work and duties, showing care and effort. "Due diligence" means diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. It means diligence as a prudent man would exercise in the conduct of his own affairs. Relevant part of the judgment is extracted below:-

"..... It was brought to our notice that both sides have closed their evidence and completed their argument, but only at this stage the defendant filed the said application for amendment of her written statement. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application. The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary

(Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial.”

The issue was further considered by Hon'ble the Supreme Court in J. Samuel's case (supra), where amendment was sought claiming the error to be typographical, which was declined. Before any amendment is allowed after the commencement of the trial, the court has to form an opinion that despite due diligence, the issue could not be raised earlier. This is a fact, which is required to be pleaded and the ground made out by the party seeking amendment in pleadings after commencement of trial. Relevant paras of the judgments are extracted below:-

“12. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that: no application for amendment shall be

allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit."

In Rajkumar Gurawara's case (supra), Hon'ble the Supreme Court considered the status of the pre-trial and post-trial amendments. It was opined that though pre-trial amendments are liberal, however, no application for amendment filed after the commencement of trial should be allowed, unless the party to the proceedings is able to satisfy the court that in spite of due diligence, it could not raise the issue before commencement of trial and the court is satisfied with the explanation. Relevant part of the judgment is extracted below:-

"5. 17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be

allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this rule is subject to proviso appended therein. The said rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings are able to satisfy the court that in spite of due diligence could not raise the issue before the commencement of trial and the court satisfies their explanation, amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso."

In Sunil's case (supra), the prayer for amendment of plaint was declined after the commencement of trial as due diligence could not be proved. In that case written statement was filed taking certain pleas on 12.8.2008. The application for amendment was filed more than three years

thereafter on 22.9.2011. Even the plea raised that the counsel was at fault, was also not accepted considering the fact that no such plea had even been raised in the application for amendment.

In Paal Kaur's case (supra), application for amendment of plaint filed after commencement of trial was rejected as the party had failed to plead and prove due diligence. The amendment sought was only with reference to the area of plot for which specific performance of agreement to sell was sought. In the plaint, it was mentioned as 400 sq. yard. In the written statement filed, it was specifically pleaded that size of plot was 626 sq. yard. Despite this fact, the plaint was sought to be amended after the issues had been framed and the evidence was led. Application for amendment was filed three years after the defendants filed written statement mentioning the correct area. The observations of the Court regarding due diligence are extracted below:-

“12. In addition to the aforesaid, in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure, proposed amendment of plaint cannot be allowed having been sought after commencement of trial. The aforesaid legal provision stipulates that amendment of pleadings shall not be allowed after commencement of trial unless the party seeking amendment, in spite of due diligence, could not have raised the matter before commencement of trial. In the instant case, it cannot be said that the plaintiff could not seek proposed amendment of plaint before commencement of trial even if the plaintiff had exercised due diligence. On the contrary, in view of written statement mentioning total area of the two plots to be 626 square yards, the plaintiff after exercise of due diligence could have sought amendment of plaint before the commencement of trial. Consequently, proposed amendment of plaint cannot be allowed in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure.”

The judgment in Anant Ram's case (supra) is distinguishable on the facts as the parties to the dispute therein were family members and they were seeking share in the property.

When the facts of the case are considered in the light of the enunciation of law as referred to above, in my opinion, no case is made out for interference in the impugned order . The application for amendment of the plaint was filed at the fag end of the trial . The facts sought to be added were well within the knowledge of the petitioner/plaintiff, who is an educated person, as these had been pointed out in the written statements. Due diligence is not only not pleaded and argued but even in the facts and circumstances of the case, is totally missing.

For the reasons mentioned above, I do not find any merit in the present petition, the same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

22.7.2015

sharmila

(Refer to Reporter)