

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 3389 of 2013

Date of decision : August 11, 2015

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Harwinder Pal Singh @ Raju and another

.....Petitioners

Versus

Smt. Raksha Wanti and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. N.S Dandiwal, Advocate for the petitioners.

Mr. Gautam Thapar, Advocate for the respondents.

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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?*

RITU BAHRI, J

The petitioners have come up in this civil revision petition against the order dated 10.4.2013 (Annexure P-7) passed by the Civil Judge (Senior Division) Moga vide which the application under Order 6 Rule 17 CPC for amendment of plaint and to correct the date of agreement to sell as 25.11.2009 in place of 24.11.2009 was declined.

The case of the petitioners was that that the stamp paper for this agreement was purchased on 25.11.2009 and it was got typed and attested from Notary on that day and that even remaining formalities regarding payment of earnest money had taken place on 25.11.2009 only but at the end of this agreement the date of

execution, due to typographical mistake was mentioned as 24.11.2009 in place of 25.11.2009. A further prayer was made in the application to add in para no. 12 of the plaint that the referred previous suit “is pending in the Court of Shri Kewal Krishan, PCS, Civil Judge (Junior Division), Moga for 27.5.2010” is to be replaced with words “was pending in the Court of Shri Kewal Krishan, PCS, Civil Judge (Junior Division), Moga and has been got withdrawn on 30.7.2010”. Despite due diligence this aspect could not be realized before the commencement of trial.

This application was dismissed by the trial Court by observing that throughout the plaint, the date of agreement was mentioned as 24.11.2009. In an affidavit and an application moved before the Sub-Registrar to mark their presence on 24.5.2010, the petitioners (plaintiffs) had categorically mentioned the date of said agreement to sell as 24.11.2009 instead of 25.11.2009. The issues were framed by the trial Court on 20.12.2010 and the matter was fixed for 11.5.2011 for evidence of the plaintiffs. Four prosecution witnesses were examined and on the date of their cross-examination, an application for amendment of plaint was moved by the petitioners (plaintiffs) and the same was withdrawn on the very next date. The trial Court dismissed the application as it did not fall within the purview of amended provisions of Order 6 Rule 17 CPC. 24.11.2009 was the date which was visible at the end of the agreement and the same was reflected in the affidavit when the petitioners (plaintiffs) had appeared before the Sub-Registrar on

25.5.2010.

Counsel for the petitioners has referred to Annexure P-6, copy of agreement to sell and has submitted that 25.11.2009 is mentioned on it when the stamp paper worth Rs. 300/- were purchased. On the receipt also the date of agreement is mentioned as 25.11.2009. However, on account of a mistake at the end of the agreement the date is mentioned as 24.11.2009. At the same time, the reference was made to an enquiry which was conducted by Tehsildar on instructions given by the Deputy Commissioner (Annexure P-5), where a finding has been given that the mother of the applicant Raksha Wanti executed an agreement to sell on 25.11.2009 which was got attested from Jaspal Kaur Notary Public District Courts Moga and also agreed for the registration of the same on 25.5.2010. As per the report of the Deputy Commissioner dated 29.4.2010, the complaint was found to be false.

After hearing counsel for the parties and going through the records of the case, I am of the opinion that the present revision petition deserves to be allowed.

An application was made by Smt. Manju Bala on 11.1.2010 for taking legal action against Tejinder Singh and Gopal Krishan Kakkar on the allegations that they had got executed a sale deed from her mother taking benefit of her old age and that she had been cheated and the possession of the house be returned back to them. On this, a report was sent by Tehsildar, Moga (Annexure P-5). During investigation, it was found that the agreement to sell dated

25.11.2009 was executed by Ms. Raksha Wanti which was got attested from Jaspal Kaur Notary Public District Courts Moga. There were two rooms, kitchen, latrine and bathroom in the land in dispute. The executant, Raksha Wanti had received Rs.3,50,000/- in cash and also agreed to get registration on dated 24.5.2010. On this agreement to sell the executant (Raksha Wanti) has also made an endorsement regarding the receipt of Rs.5,00,000/- on back side of the first page of agreement to sell on dated 9.12.2009 which was also signed by the witnesses. As per the report of the Deputy Commissioner dated 29.4.2010 it was not found that Gopal Krishan had cheated anyone. After going through the detailed enquiry conducted by the Tehsildar, Moga (Annexure P-5) and as per the agreement to sell (Annexure P-6), it is clear that the agreement was executed on 25.10.2009 and even the receipt of the amount of Rs.8,50,000/- was issued on the same date. However, at the second page of agreement (Annexure P-6), the date has been mentioned as 24.11.2009. As per the report of the Deputy Commissioner dated 29.4.2010, the agreement to sell is not surrounded by any suspicion or cheating by Gopal Krishan Kakkar. Hence, the prayer of the petitioners that the necessary correction regarding the date of agreement to sell be made is well within purview of amended provisions of Order 6 Rule 17 CPC.

In view of all that has been discussed above, present revision petition is allowed and the order dated 10.4.2014 is set

aside. Necessary correction in the agreement to sell dated 25.11.2009 is allowed.

August 11, 2015
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(**RITU BAHRI**)
JUDGE