

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGRH

CR No. 4847 of 2009(O&M)

Date of decision: 7.12.2015

Hargobind Singh

.....Petitioner

versus

Sandeep Singh and others

.....Respondents

A N D

CR No.4045 of 2014

Hargobind Singh

.....Petitioner

Vs.

Sandeep Singh and others

.....Respondents.

Coram: Hon'ble Mr. Justice Amit Rawal

Present: Mr. Puneet Sharma, Advocate for the petitioner (in both petitions).

Mr. K.S.Sidhu, Sr.Advocate with
Mr. G.S.Benipal, Advocate for respondents No.1 and 2 (in both petitions).

1. Whether reporters of local papers 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?

Amit Rawal, J.(Oral)

By this common order, I shall dispose of two revision petitions bearing CR Nos.4847 of 2009 and 4045 of 2014 which are against the order dated 20.5.2009 whereby application moved by the petitioner-defendant

seeking amendment of written statement at the stage when the suit was fixed for the respondent-plaintiff's evidence incorporating preliminary objection No.6 has been declined, whereas in other revision petition bearing CR No.4045 of 2014 an application filed by the respondent-plaintiff seeking interference of this Court to prove agreement to sell dated 23.6.2003 by way of secondary evidence has been allowed.

Learned counsel appearing on behalf of the petitioner-defendant submits that the amendment sought will not alter or change the nature of suit much less would not tantamount to withdrawal of the admission as it is an attempt to elucidate the defence much less to admit the execution of the agreement to sell dated 23.6.2003 which ultimately resulted into the execution of registered sale deed dated 30.7.2003. The secondary evidence in view of the admission of the agreement to sell need not to be necessary as once the defendant admitted the document, the plaintiff need not to prove the execution of the sale deed.

Mr.K.S.Sidhu, learned Senior counsel assisted by Mr.G.S.Benipal, Advocate appearing on behalf of the respondents in Civil Revision No.4847 of 2009 submits that amendment is not admissible in law as trial had already begun and exercise of due diligence has been explained. As regards Civil Revision No.4045 of 2014 he further submits that in the application under Section 65 of the Indian Evidence Act, the prayer was also made calling upon defendant to produce agreement to sell in order to comply with the provisions of Section 66 of the Indian Evidence Act and the reply was a specific denial and therefore, it had become necessary to prove agreement to sell by way of secondary evidence. Obviously, it would be subject to the proof and existence, which is mandatory requirement of

law.

I have heard learned counsel for the parties and appraised the paper book.

The amendment sought to be incorporated in the written statement reads as under:

“That the sale in question was carried out as per terms and conditions of agreement to sell dated 23.6.2003 and endorsement made there on dated 7.7.2003. Defendant No.3 has already received Rs.9 lacs before execution of the sale deed in terms of the agreement to sell dated 23.6.2003. He has received Rs.5,00,000/- on 23.6.2003 at the time of execution of agreement to sell and Rs.4,00,000/- on 7.7.2003 from the applicant-defendant No.1 as he was in dire need of money and endorsement to this effect was made on the reverse page of page No.2 of agreement to sell. Thus, defendant No.3 Mohinder Singh has received Rs.9 lacs as earnest money before execution of the sale deed on 30.7.2003. Agreement to sell dated 23.6.2003 and endorsement dated 7.7.2003 has been duly signed by the parties and witnesses. Defendant No.3 Mohinder Singh has actually received Rs.19,50,000/- the total sale consideration from defendant No.1. Factum of agreement to sell dated 23.6.2003 and endorsement dated 7.7.2003 made thereon was not mentioned in the written statement earlier because defendant No.3 had advised the answering defendant not to show this document in the sale deed, otherwise, both the parties will be required to pay the stamp duty on that amount of Rs.9,00,000/- also. Defendant No.1 fell into the trap of defendant No.3 Mohinder Singh who has now got the present suit filed from his sons in connivance with each other in order to cause irreparable loss and injury to the answering defendant. So, the sale deed was executed only for Rs.10,50,000/- as mentioned in the sale deed, whereas actually defendant No.3 has received total sale consideration of Rs.19,50,000/- from defendant No.1 as mentioned in the agreement to sell.”

From the perusal of the amendment, it reveals that defendant is admitting the contents of the agreement and endorsement payment made from time to time before agreement to sell converted into execution and registration of sale deed dated 30.7.2003 the aforementioned amendment in my view would not alter or change the nature of suit as it would help in adjudicating the controversy between the parties. Thus, the impugned order is set aside. Application moved on behalf of the petitioner seeking amendment to incorporate preliminary objection No.6 *ibid* is allowed. Revision petition bearing CR No.4847 of 2009 stands allowed.

As regards CR No.4045 of 2014, in view of the fact that defendant has admitted the execution of the agreement, plaintiff would be saved from the trouble by proving the agreement to sell dated 23.6.2003 by way of secondary evidence, therefore, in my view, there would be no need for allowing the plaintiff to prove the same in accordance with law. It is made clear that such observations are made owing to fact that defendant had admitted the execution of the agreement to sell dated 23.6.2003.

Keeping in view the afore-mentioned fact, order allowing application for secondary evidence is not sustainable and is hereby set aside. Accordingly, Revision petition bearing No.4045 of 2014 with the afore-mentioned observations, stands allowed.

7.12.2015
Meenu

(AMIT RAWAL)
JUDGE