

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

**Civil Revision No.4039 of 2013 (O&M)**

Date of decision:25.03.2015

Smt. Khajani Devi widow of Hukam Chand son of Duli Chand,  
resident of Mohalla Shekhpura Palwal, Tehsil and District Palwal,  
and others.

... Petitioners

versus

Ranbir son of Shri Puran Lal, resident of Rasulpur road, Saini  
Nagar, Palwal, Tehsil and District Palwal, and another

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr.Johan Kumar, Advocate,  
for the petitioners.

Mr. Y.P. Khullar, Advocate,  
for the respondents.

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1. Whether reporters of local papers may be allowed to see the judgment ?No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

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**K.Kannan, J. (Oral)**

1. The petitioners, who were the legal representatives of the deceased-defendant Hukam Chand brought an application for amendment of the written statement on 02.05.2012. The suit had been filed for return of the earnest money paid under an agreement by the plaintiffs to the deceased Hukam Chand. The defendants were attempting to state by means of an amendment that Hukam Chand had, in anticipation of fulfillment of the contract by the

plaintiff's purchase, entered into agreement of purchase with three persons and parted with the amount received from the plaintiff but he could not complete his own contracts on account of failure of the plaintiff in performance part of the contract. To the extent that there was a reference to the defendant altering his position and suffering some detriment with contract to third parties, it was surely relevant for a court to consider whether the plaintiff is entitled to return of the advance amount paid under the agreement.

2. The court below, however, dismissed the application holding that the defendant had filed the written statement and issues were framed on 07.09.2010 itself and the application for bringing on record the legal heirs was allowed even on 29.08.2011 whereas the present application was filed only on 02.05.2012. The court was examining the attempt to amend the pleading in the context of the statutory changes that had come about to Order 6 Rule 17 CPC which prohibits any amendment to be brought after the commencement of the trial in situations except where the party could not have known in spite of exercise of due diligence of certain facts which could have been set forth even earlier. The court found that the petitioners were only the legal representatives of the defendant and they cannot take up pleas which the deceased himself had not taken. The counsel for the petitioners would explain that after the framing of issues in the year 2010, the trial Court actually

commenced only in July 2013 and the application for amendment had been filed even earlier. The counsel would also argue that all the documents of agreement entered into by the father have been already marked in evidence but they have not been exhibited as evidence for being read as a part of the evidence given by the defendant.

3. I will not go as far as to state that the amendment was not essential for a proper adjudication. The fact that the defendant had altered his position and suffered detriment to third parties was surely relevant for consideration of whether the plaintiff must be granted the benefit of return of the money. If the defendants have given such evidence already, the court will consider it as appropriate and if the documents have also been marked, I direct them to assign exhibit numbers. I would take it as possible in the light of Order 6 Rule 2 CPC which states that the matter of evidence need not be pleaded.

4. I take the instance of the defendant entering into agreement with third parties and parting with sums to be a matter of evidence that is relevant for consideration. Considering the further fact that the defendant had filed the petition for amendment at the commencement of the trial, even before the court took up the application for amendment, I am of the view that allowing the amendment to be brought of what is otherwise essentially a matter of

evidence would only delay matters and the defendant would be seeking for reopening all the witnesses for giving evidence in that regard. The court was applying the correct principles for not allowing the amendment of an aspect to the case which the defendant surely knew even at the time of filing of a suit. The counsel was also justified in stating that the rights of the legal representatives cannot be to bring matters which the defendant-deceased could have known and brought forth by his pleadings.

5. I dismiss the civil revision upholding the order but modify the observations relating to the relevance of the documents which the deceased-defendant had purportedly entered into with third parties offering to purchase some properties and a further direction to exhibit them as evidence by assigning exhibit numbers. The plaintiff, at his option, may recall the witness during whose evidence the documents had been already marked and if such a request is made, the court shall give that opportunity. The court below shall therefore hear the arguments on all issues and dispose of the case in accordance with law.

**(K.KANNAN)**  
**JUDGE**

25.03.2015  
sanjeev