

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4314 of 2014 (O/M)
Date of decision : 13.8.2015

M/s Vikas House Building Co. Ltd. Revisionist

Versus

Gulzar Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sumeet Mahajan, Senior Advocate, with,
Mr. Amit Kohar, Advocate, for the revisionist.
Mr. G.S. Punia, Senior Advocate, with,
Mr. P.S. Punia, Advocate, for respondent No. 1.
Mr. Amit Gupta, Advocate, for respondent No. 5.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

This order of mine will dispose of the present revision, vide which the plaintiff (revisionist herein) has challenged the order dated 7.5.2014, passed by the learned Civil Judge (Junior Division), Ludhiana, whereby the application of the plaintiff/revisionist for amendment of the plaint was dismissed.

The brief facts involved in the present case are that the plaintiff/revisionist had file a suit for possession by way of specific performance of the agreement dated 15.02.1997 regarding the land mentioned in the plaint. The mandatory injunction and the

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permanent injunction was also sought. It was, inter-alia, claimed in the plaint that the last payment was made to defendant No. 1 (respondent No. 1 herein) on 6.11.2003 through five drafts, drawn on Canara Bank, Rajpura Road, Ludhiana, the details of which was annexed with the plaint. It was further averred that on 6.11.2003, defendant No. 1/respondent No. 1, at the instance of plaintiff/revisionist, executed a sale deed in favour of Rakesh Mehta son of Baldev Raj. The defendant/respondent remained the owner of land measuring 4 Bighas 19 Biswas and 12 Biswas. The possession of the said land was already with the plaintiff/revisionist. It was further, inter-alia, averred that since the entire sale consideration was already received and the sale deed was not executed in favour of plaintiff/revisionist-company, therefore, it was again mutually settled between the parties that sufficient time had passed after the execution of agreement dated 15.2.1997 and, therefore, the consideration was fixed at Rs. 1.75 crores, instead of Rs. 1.15 crores. Out of the said amount of Rs. 1.75 crores, defendant No. 1/respondent No. 1 had already received Rs. 1,73,28,250/- and balance remains as Rs. 1,71,750/-. The agreement to this effect was executed on 6.11.2003, which was confirmed by the defendant/respondent in the said agreement. However, in the prayer clause, the relief sought was only regarding agreement dated 15.2.1997.

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In the written statement, defendant No. 1/respondent No. 1 has denied the agreement dated 6.11.2003. Before the framing of the issues, the present application for amendment of the plaint was filed, wherein the following amendments were sought in the headnote of the plaint, body of the plaint and prayer clause, which are reproduced as under :-

“a) In the head note of the plaint, before the words “in respect to land measuring” and after the words “in favour of the plaintiff company”, the plaintiff wants to add the following :-

“which was confirmed and renewed through agreement/writing dt. 6.11.2003”.

b) Paragraph No. 11 (b) may be added as follows :-

“The defendant Gulzar Singh confirmed the agreement dt. 15.02.1997 on 6.11.2003 and also confirmed the receipt of amount of Rs. 1,73,28,250/- and also that the balance remains Rs. 1,71,750/- which was a very inconsequential part of the consideration which the plaintiff company has always been ready and willing to pay. Therefore, on 6.11.2003, the agreement dt. 15.02.1997 was confirmed and renewed. The plaintiff company, therefore, is entitled to seek specific performance of the agreement dt. 15.02.1997 as well as dated 06.11.2003”.

c) In the prayer clause, before the words “in respect of land measuring” and after the words “in favour of the plaintiff company”, the plaintiff wants to add the

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following :-

“which was confirmed and renewed through agreement/writing dt. 06.11.2003”.

The said application was dismissed in the impugned order.

I have heard learned senior counsel for the plaintiff/revisionist, learned senior counsel for defendant No. 1/respondent No. 1, learned counsel for respondent No. 5 and have also carefully gone through the file.

While dismissing the application, the trial Court had noticed the provisions of Order 6 Rule 17 of Code of Civil Procedure, 1908 (in short 'CPC') by observing that 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. The trial Court had also noticed the provisions of Order 6 Rule 17 CPC wherein after the trial has commenced, the law relating to the amendment has been made strict. The present case is covered under the first clause wherein the amendment was moved before the commencement of the trial.

Learned senior counsel for defendant No. 1/respondent No. 1 has argued that infact agreement dated 6.11.2003 is a fresh

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agreement and that claim on the basis of said agreement is time barred. Therefore, the application for amendment of the plaint was rightly dismissed by the trial Court. The trial Court has observed that the plaintiff/revisionist has not acted in the diligent manner and it appears that the present application has been filed just to delay the trial.

After considering the rival contentions of the parties, I am of the view that the fate of the agreement is to be determined during trial. There is one error of date of agreement mentioned as 15.7.1997, which now it is argued that it is a typographical error/mistake and the date of agreement is 15.2.1997. Therefore, the fate of the said agreement/writing dated 6.11.2003 is a mixed question of facts and law and is only to be determined during trial. The law relating to the amendment of pleadings before the commencement of trial is liberal. It is stated that the said agreement/writing was mentioned in the pleadings, but no mention was made in the headnote of the plaint and prayer clause, which is now sought to be added. The third para sought to be added is only clarifying the said agreement and no new case is being introduced.

It being so, I am of the view that trial Court had erred in dismissing the application of the plaintiff/revisionist for amendment of the plaint. Consequently, the impugned order dated 7.5.2014, passed by the learned Civil Judge (Junior Division), Ludhiana, is set

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aside and the application for amendment of plaint, as sought by the plaintiff/revisionist, is allowed. The plaintiff/revisionist is also burdened with costs of Rs. 10,000/-. However, defendant No. 1/respondent No. 1 shall always be at liberty to file amended written statement to the said amended plaint and raise the pleas available to him, which shall be decided on merits by the trial Court after recording the evidence.

The present revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

13.8.2015
sjks