

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

CR No.4739 of 2015.

Date of Decision: 24.08.2015.

Balwinder Singh

....Petitioner.

VERSUS

Chander Parkash and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 04.03.2015 passed by learned Civil Judge (Junior Division), Karnal, vide which the application under Order 6 Rule 17 of the Code of Civil Procedure (for short, "C.P.C.") filed by the respondents No.1 and 2-plaintiffs was allowed.

From the facts pleaded by the petitioner and on perusal of the impugned order, it transpires that a suit for permanent injunction was filed by respondents No.1 and 2-plaintiffs alleging that the petitioner (defendant No.1 in the suit) and his co-defendants (proforma respondents No.3 and 4)

had agreed to sell their lands to the plaintiffs (respondents No.1 and 2) at the rate of Rs.53 lacs per acre and had received Rs.25 lacs as earnest money. The actual physical possession of the land was handed over to the plaintiffs so that they be able to get the school building constructed on the same. The target date for execution and registration of the sale deed was 26.06.2012.

Since on the target date the petitioner-defendant backed out from performance of the contract despite the fact that respondents No.1 and 2-plaintiffs were ready and willing to perform their part of the contract, the plaintiffs filed an application under Order 6 Rule 17 C.P.C. for amendment of the plaint so as to add the prayer for decree of possession, for specific performance with the consequential relief of permanent injunction.

The application for amendment was resisted by the petitioner. However, after hearing submissions of counsel for the parties, the application was allowed by learned Civil Judge (Junior Division), Karnal, vide the impugned order dated 04.03.2015.

Aggrieved by the said order passed by learned Civil Judge (Junior Division), Karnal, the petitioner filed the instant petition.

The submissions made by Mr. Harkesh Manuja, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued with vehemence that in the suit for permanent injunction filed by the contesting respondents-plaintiffs they have specifically pleaded that the defendants wanted to back out from their words regarding the enforcement of agreement to sell dated

22.12.2011 and this fact came to light when defendants No.1 and 2 (petitioner and his co-defendant) came to the land in question and directed the plaintiffs (respondents No.1 and 2) to stay the construction immediately and also directed the plaintiffs to remove their building material from the land in question. Learned counsel asserted that when at the time of filing of the suit for permanent injunction, the plaintiffs-respondents No.1 and 2 knew that the petitioner (defendant) did not have the intention to enforce the agreement to sell dated 22.12.2011, the cause of action had immediately arisen to them to seek relief of specific performance of the agreement to sell, however, at that time they chose to file a simplicitor suit for permanent injunction claiming relief for specific performance. As per the provisions of Order 2 Rule 2 C.P.C. once the plaintiffs themselves abandoned the claim of specific performance they could not be allowed to raise the same by way of amendment. To support his argument, learned counsel relied upon **M/s. Virgo Industries (Eng.) P. Ltd. Versus M/s. Venturetech Solutions P. Ltd., 2012(4) R.C.R. (Civil) 372.**

There appears to be no merit in the argument of learned counsel for the petitioner. The facts in hand are on a completely different footing. Order 2 Rule 2 and Rule 3 C.P.C. contemplate two different situations namely where the plaintiff omits or relinquishes a part of claim which he is entitled to make and secondly where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. In the instant case, plaintiffs (respondents No.1 and 2) filed the suit for permanent injunction apprehending interference in their possession by the

petitioner (defendant). The said suit was filed on 05.06.2012 whereas as per the agreement the date for execution of the sale deed had been fixed as 26.06.2012. From the pleadings of the plaintiffs (respondents No.1 and 2) at the most it could be assumed that at that time they had apprehension that the defendants-respondents No.1 and 2 may not honour the agreement on the due date, but there was no such overt act or conduct in specific of the defendants which could convey for sure that the petitioner (defendant) had no intention to honour the agreement to sell i.e. to execute the sale deed on the date fixed for the said purpose which was yet to come. It is only on the date fixed for execution of the sale deed that when the petitioner (defendants), as alleged by the respondents No.1 and 2-plaintiffs, did not come forward for enforcement of the agreement to sell i.e. to execute the sale deed that the cause of action to seek relief of specific performance accrued to respondents No.1 and 2-plaintiffs and accordingly they filed an application for amendment in the suit to add in the prayer clause for a decree of possession by way of specific performance.

Thus, finding no illegality or perversity in the order of learned trial Court warranting intervention, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

24.08.2015.
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