

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4647 of 2014

Date of Decision.17.07.2015

Balbir Singh

.....Petitioner

Versus

Sikander Singh and another

.....Respondents

Present: Mr. J.S. Moudgil, Advocate
for the petitioner.

Mr. Harshit Jain, Advocate
for respondent No.1.

None for respondent No.2.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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 revision petition is against the order allowing an application for amendment of the written statement filed by the 1st defendant. The revision petitioner is the 2nd defendant who set up his own right under an agreement executed by the 1st defendant. The suit has been filed by the wife of the 1st defendant.

2. In the suit filed by the wife, the husband has already filed a written statement denying plaintiff's right and contending that he has entered into agreement of sale in respect of the suit property with the 2nd defendant. Now during the pendency of the suit, it would appear that there has been a shift in loyalties and the 1st defendant has moved an application for amendment which substitutes an original written

statement and gives new written statement. The new written statement discards the averments which he has made with reference to the agreement of sale in favour of the 2nd defendant. On the other hand, it sets out a subsequent event of the 1st defendant's selling the property to the plaintiff herself purporting to empower her with right to suit property. That has been allowed.

3. It is obvious from the narration of facts that the 1st defendant has attempted to withdraw from the ken of Court's enquiry an important fact relating to agreement of sale which he has entered in favour of the 2nd defendant. Though not an admission directly against the plaintiff, it is a version contained in the written statement filed by the 1st defendant and it was surely an important corroborative evidence of what the 2nd defendant urges for in his defence in the suit. If the entire averments relating to the agreement is withdrawn, to that extent the 2nd defendant is bound to be prejudiced.

4. Learned counsel appearing on behalf of the respondent says that the 2nd defendant has already set up his agreement in written statement and there is no requirement of any corroboration from the 1st defendant's written statement. He would also state that the written statement itself was sought to be amended before the commencement of the trial and there is no fetter in law for allowing for such amendment. The counsel would also plead that the strict rules of amendment regarding inconsistent pleas will not be applicable to the plaintiff and the Court shall always be liberal in construing the written statements and their amendments by the defendants.

5. I am not impressed with any of the arguments, for, they set

out the principles of law in a generic sense. The most crucial aspect that would require a focus is whether the amendment by any party would constitute a prejudice. I have explained already that it does constitute a very serious prejudice and it cannot be permitted to be done.

6. The impugned order is set aside and the revision petition is allowed.

(K. KANNAN)
JUDGE

July 17, 2015
Pankaj*