

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

CR-6174-2011

Date of decision : 08.12.2015

Arjun Shah Singh

...Petitioner

Versus

Chanchal Kumari and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rohit Ahuja, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Advocate
for respondent No.2.

Mr. Ashwani Saini, DAG, Haryana.
for respondent No.3.

Ms. Indu Bala, Advocate for
Mr. Keshav Pratap Singh, Advocate
for respondent Nos.4 and 5.

Mr. N.S. Shekhawat, Advocate
for respondent Nos.6 and 7.

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the order dated 19.02.2011, whereby the application filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short' CPC'), seeking amendment in the plaint by incorporating the paragraph 5A and certain lines and as well as the prayer clause, has been declined.

Mr. Rohit Ahuja, learned counsel appearing on behalf of

the petitioner submits that earlier, a suit for permanent injunction was filed, however, the trial Court in pursuance of the directions given by this Court vide order dated 08.04.2010 allowed the suit to be amended by incorporating the relief for specific performance of the agreement to sell dated 07.09.2004. However, since the trial has not begun, the petitioner-plaintiff acquired the knowledge of two sale deeds dated 18.05.2005 and 07.11.2005 executed by the vendor in favour of respondents-defendants No.4 to 7 and in these circumstances, the application for amendment was moved for challenging the aforementioned sale deeds. However, the trial Court had declined the application on the ground that only one sale deed has been challenged and as well as under the garb of the amendment, the petitioner-plaintiff wants to incorporate the ingredient of Section 16 (c) of the Specific Relief Act and he prays that the amendment sought is most genuine and innocuous for the adjudication of the controversy between the parties to the lis.

Ms. Indu Bala, Advocate appearing on behalf of respondent Nos.4 & 5 and Mr. N.S. Shekhawat, Advocate appearing on behalf respondent Nos.6 and 7 submit that the petitioner-plaintiff failed to make the specific requirement of Section 16 (C) of the Specific Relief Act and sought the amendment of the suit seeking permanent injunction by incorporation the relief of performance for specific performance. Alleging this mistake under the garb of challenging the sale deeds, they want to incorporate the statutory ingredients, which

is not permissible in law thus there is no illegality and perversity in the order under challenge.

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

It would be apt to re-produce paragraph 5-A which is sought to be amended which reads thus:

"That after the institution of the suit by the plaintiff, the defendant No.1 illegally and unlawfully and in order to defraud the plaintiff sold the house bearing No.276, Sector 21-B, Faridabad in favour of the defendant No.2 and 3 vide registered sale deed dated 18.05.2005 and later on the said defendant No.2 and 3. Further sold the said H.No.276, Sector 21-B, Faridabad in favour of defendant No.4 and 5 vide registered sale deed dated 07.11.2005. Both the sale deeds took place during the pendency of the suit. The plaintiff is not bound by both the sale deeds referred above. They have taken place during the pendency of the suit and hit by the provision of Section 50 T.P. Act. Both the sale deeds may be declared as illegal, unlawful, void without powers and authority and is not binding upon the plaintiff. The plaintiff has always been ready and willing and is still ready and willing to perform his part of the agreement. The defendant evaded the same on false pretext. The plaintiff is entitled to

get the sale deed executed and registered in his favour on payments of balance sale consideration from the defendants."

On going through the aforementioned amendment, the petitioner-plaintiff has also sought to incorporate para in the prayer clause and certain lines in paragraphs 6, 7 and 11 of the plaint, which have been mentioned in Annexure P-3.

In my view, the trial Court has committed illegality and perversity in declining the application on the premise that as per the amendment sought, the petitioner-plaintiff has only challenged one sale deed dated 18.05.2005 and not 07.11.2005, whereas on the perusal of paragraph 5A, both the sale deeds have been challenged. Though, in paragraph 4 of unamended plaint there is averment about the availability of cash, thus in order to elucidate the same ingredients as envisaged under Section 16 (c) of the Specific Relief Act are being sought to be incorporated. In my view, the suit is at the initial stage and therefore, the amendment sought at the instance of the petitioner-plaintiff cannot be rejected.

Keeping in view the aforementioned facts, the impugned order is set aside and the application filed under Order 6 Rule 17 CPC, seeking amendment in the plaint is allowed.

Accordingly, the revision petition stands allowed.

08.12.2015
yogesh

(AMIT RAWAL)
JUDGE