

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

* * * * *

CR No. 6307 of 2015

Date of decision : September 24, 2015

* * * * *

Surinder Singh and another

.....Petitioners

Versus

Abdul Hameed @ Dalip and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

* * * * *

Present: Mr. Harminderjeet Singh, Advocate for the appellant.

* * * * *

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present revision petition has been filed against the order dated 4.9.2015, whereby an application filed by the petitioners-defendants no. 2 and 3 for amendment of the written statement has been dismissed.

The respondents no. 1 & 2-plaintiffs had filed suit for possession by way of specific performance which was decreed vide judgment and decree dated 15.4.2011 and the agreement of sale dated 6.5.2002 set up by the petitioners-defendants no. 2 & 3 has been disbelieved by the trial Court. The issue no.7 as to whether agreement dated 6.5.2002 executed by respondent no.3-defendant no.1 in favour of petitioners-defendants no. 2 & 3 is ante-dated,

forged and fabricated etc. was decided against the defendants and in favour of the plaintiffs. The impugned judgment dated 15.4.2011 was challenged by way of appeal by the petitioners-defendants no. 2 & 3.

Before the trial Court, counsel for the petitioners-defendants no. 2 and 3 pleaded that these defendants are bona fide purchasers for valid consideration on the basis of sale deed dated 18.1.2005 which was preceded by agreement of sale dated 6.4.2002 executed by defendant no.1 in their favour. At the stage of appeal, an application was made for amendment in the written statement to take a legal objection that the suit of the plaintiff is barred under Order 2 Rule 2 CPC. Another legal objection was taken that the alleged agreement dated 7.12.2002 and writing dated 31.12.2003 had no effect on the rights of petitioners-defendants no. 2 and 3 as they were bona fide purchasers for consideration and they had purchased the land after examining the revenue record. The trial Court by making reference to the issue no.7 rejected the prayer for amendment on the ground that they were bona fide purchasers as on issue no.7, a finding has been given in favour of the plaintiff that the agreement dated 6.5.2002 executed by defendant no.1 in favour of defendants no. 2 and 3 is ante dated, forged and fabricated. Reference was made to a judgment in the case of **Rathnavathi and another vs. Kavita Ganashanmdas, 2015 (1) Law Herald 40**, wherein it was held that when the defendant enters into an agreement of sale to sell his house to the plaintiff and also gives possession and later on threatens the plaintiff to dispossess him and

the plaintiff filed suit for injunction restraining the defendant from dispossessing him and subsequently plaintiff filed suit for specific performance of contract, the second suit is not barred by virtue of bar contained in Order 2 Rule 2 CPC. The cause of action in two suits is different and hence it was not barred by virtue of bar contained in Order 2 Rule 2 CPC. Moreover, the present suit was filed on 22.3.2005 and the written statement was filed by defendants no. 2 & 3 on 4.3.2006. The issues were framed on 7.12.2007 and then the case was decided on 21.4.2011. After framing of the issues till the decision no application for amendment was made before the trial Court. Since the amendment being sought is covered under issue no.7 and as per the judgment of Hon'ble the Supreme Court in **Rathnavathi 's case (supra)**, the suit was not barred by order 2 Rule 2 CPC, no ground is made out to interfere in the order dated 4.9.2015.

Revision petition is dismissed.

September 24, 2015
ritu

(**RITU BAHRI**)
JUDGE