

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 7519 of 2012 (O&M)

Date of decision: 30-10-2015

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Shamshad Begum

.....Petitioner

Versus

Mohd. Hassan Murtaza and others

.....Respondents

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. D.D Gupta, Advocate for the petitioner.

Mr. Deepak Sharma, Advocate for respondents no. 2 & 3.

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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

This revision petition has been filed against the order dated 19.11.2012 (Annexure P-7) passed by the Civil Judge (Junior Division), Panchkula, whereby an application made by the petitioner-plaintiff under Order 6 Rule 17 of CPC for amendment of plaint and under Order 1 Rule 10 CPC for impleading Smt. Sulochana Kaur and Smt. Santosh Kuar in the array of the parties in the suit has been dismissed.

On 4.2.2006, an agreement to sell was executed in favour of the petitioner-plaintiff by defendant no.1-respondent no.1 for four

acres of land for a sale consideration of Rs.1,50,000/- per acre. An amount of Rs.70,000/- was given by the petitioner-plaintiff as earnest money. The date for the execution and registration of the sale deed was fixed as 2.6.2006. Thereafter by mutual consent, verbally, this date was changed to 5.6.2006. On 5.6.2006, the petitioner-plaintiff presented herself along with balance sale consideration and the other necessary funds for charges etc. in the office of the Sub Registrar, however, the respondent no.1-defendant no.1 failed to show up. Thereafter the date for execution of the sale deed was fixed for 30.4.2007. On 1.3.2007, the plaintiff filed the present suit for permanent injunction restraining the defendant from alienating the suit land. Vide registered sale deed dated 2.3.2007, respondent no.1 sold 9 Kanals 18 marlas land to respondents no. 2 & 3 i.e Jaswinder Kaur and Barkha Kaur. Thereafter the petitioner-plaintiff filed an application for amendment of the plaint seeking the relief of specific performance of the contract. Another miscellaneous application was allowed seeking the relief of specific performance of the contract against respondent no.1-defendant no.1 and declaration against respondents no. 2 & 3-defendants no. 2 & 3 that the sale deed executed in their favour was not binding on the rights of the petitioner-plaintiff. At the stage of submitting documentary evidence, respondents no. 2 & 3-defendants no. 2 & 3 filed their respective written statements. The petitioner-plaintiff came to know from the office of Halqa Patwari that defendant no.1-respondent no.1 had sold a part of the suit land to respondent no.2 vide sale deed dated

21.6.2006 much prior to the filing of the original suit. The present application (Annexure P-5) in question was filed thereafter to amend the plaint as well as to implead Sulochana Kaur and Santosh Kaur as respondents in the civil suit.

On notice, reply was filed by the defendants-respondents and finally the trial Court dismissed the application on 19.11.2007 (Annexure P-7).

Counsel for the petitioner-plaintiff argued that he had no occasion to implead and amend the plaint with regard to the sale deed dated 21.6.2006 as it was not in his knowledge. Rather, respondents no. 2 & 3-defendants no. 2 & 3 had disclosed this fact at the time of filing written statement in the suit. The plaintiff got the computerised print of the revenue record on 5.11.2012 when the certified copy of the sale deed was obtained from the office of the Joint Sub-Registrar, Raipur Rani and, thereafter, the present application (Annexure P-5) for making the suitable amendment and implead the respondents was filed. He has further argued that two previous applications under Order 6 Rule 17 CPC have been allowed with respect to the sale deed made in favour of Jaswinder Kaur and Barkha Kuar of 9 kanals and 18 marls of land and hence this application could not have been dismissed.

Counsel for the defendants-respondents, at the same time has argued that mutation has been sanctioned on 20.7.2006 much prior to the filing of the present suit i.e on 1.3.2007. At the time of filing first application under Order 6 Rule 17, the petitioner-plaintiff

did not mention these facts and hence the application has been rightly dismissed by the trial Court. At the time of filing of the present suit, the petitioner-plaintiff had the knowledge of the sale deed dated 21.6.2006. Sulochana Kaur and Santosh Kaur being bona fide purchasers had no knowledge of the alleged agreement dated 2.4.2006 at the time of sale deed.

Heard counsel for the parties.

The petitioner-plaintiff was required to prove the due diligence as laid down in **proviso of Order 6 Rule 17** which is reproduced as :

“ Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

In **Ajendraprasadji N. Pande and another vs. Swami Keshavprakeshdasji N. and others 2007 (1) RCR (Civil) 481**, Hon'ble Supreme Court held that a party seeking amendment has to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. Amendment in pleadings cannot be allowed when trial had commenced. Trial is deemed to commence when the issues are settled and the case is set down for recording of evidence. In paragraph 54, it has been observed as

under:

54. It is submitted that the date of settlement of issues is the date of commencement of trial. [Kailash vs. Nankhu & Ors. (supra)] Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial. We have already referred to the dates and events very elaborately mentioned in the counter affidavit which proves lack of due diligence on the part of the defendant Nos. 1 and 2 (appellants).

In the absence of any explanation of due diligence any amendment of plaint after a trial is commenced should not be allowed. The object of the above proviso is to avoid multiplicity and prolonging of litigation. In the facts of the present case, the sale deed was executed on 21.6.2006 and mutation was sanctioned on 20.7.2006. Both the dates are before filing of the suit i.e 1.3.2007. In the affidavit given by Jaswinder Kaur, it is specifically stated that Sulochna and Santosh Kaur purchased 11 kanals and 11 marlas of land vide registered sale deed on 21.6.2006 from respondent no.1-defendant no.1 for valuable consideration of Rs.2,00,000/- and mutation no. 1025 as per sale deed was duly sanctioned on 20.7.2006. It is further stated in the affidavit that the petitioner-

plaintiff objected the mutation of sale deed no. 1448 registered on 2.3.2007. Hence once the petitioner-plaintiff was aware about the sale deed no. 1448, he could not take somersault and say that he came to know about the mutation sanctioned from the revenue record of 5.11.2012 as stated in his application (Annexure P-5). His participation in the mutation proceedings before the Assistant Collector (IInd Grade) shows that he was already aware that respondent no.1-defendant no.1 had made sale deed in favour of the Santosh Kaur, Jaswinder Kaur and Sulochana Kaur. Therefore after filing the suit in the year 2007, he has no explanation to pray for amendment of the plaint with respect to the sale deed dated 21.6.2006 by way of the application (Annexure P-5). The plaintiff has miserably failed to prove his due diligence. The revenue record is a public information which the plaintiff could have procured even at the stage of making the first application to implead respondents no. 2 & 3-defendants no. 2 & 3 i.e Jaswinder Kaur and Barkha Kaur, which he has not done. Hence he could not show sufficient cause for making the amendment and challenging the sale deed dated 21.6.2006.

Counsel for the appellant referred to a judgment in the case of **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, wherein Hon'ble the Supreme Court held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation. All

amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit.

Counsel for the appellant also referred to a judgment of Hon'ble the Supreme Court in ***Sampath Kumar vs. Ayyakannu and another in Civil Appeal No. 5839 of 2002 (Arising out of S.L.P (C) No.21709 of 2001)*** decided on **13.9.2002** in which there was delay in seeking amendment to convert the suit for injunction into a suit for possession on the ground that possession has been taken illegally during pendency of suit. Suit was pending since more than ten years. It was held by Hon'ble the Supreme Court that if the plaintiff is still entitled to file a fresh suit that relief should be allowed to be claimed by way of amendment to curtail multiplicity of proceedings.

Reference was also made to a judgment passed by a Co-ordinate Bench of this Court in the case of **Baldev Singh vs. Manjit Singh and others 2015(3) RCR (Civil) 97**, wherein an application for amendment of the plaint was made to rectify the typographical mistakes claiming that these were inadvertent and innocuous mistakes which were not going to affect or prejudice the opposite party. Application for amendment of the plaint was allowed and it was held that the petitioner-plaintiff is not going to gain anything by delayed filing of this application for amendment of the plaint to bring in correct particulars of the land in litigation where wrong description has come because of inadvertent typographical error. In another judgment passed by a Coordinate Bench of this

Court in the case of ***Sharwan Kumar Mittal vs. Vibha Gupta and another*** in ***Civil Revision No.6612 of 2014*** decided on **29.4.2015**, petitioner had already filed a suit for possession by way of specific performance of agreement to sell. Only amendment sought in the plaint was to challenge the cancellation of the agreement to sell. It was held that the relief by way of amendment sought by the petitioner is so interconnected with the main relief already sought in the suit that independent suit for that purpose will not be maintainable and the application for amendment of the plaint filed by the petitioner was allowed.

These judgments will not be applicable to the facts of the present case as the petitioner-plaintiff had earlier filed two applications. A perusal of the impugned order dated 19.11.2012 (Annexure P-7) shows that the plaintiff had filed a suit on 1.3.2007 and thereafter had made two applications under Order 6 Rule 17 which were allowed vide order dated 10.2.2009 and vide order dated 17.9.2012. The mutation with respect to the sale deed No.326 dated 21.6.2006 had been sanctioned on 20.7.2006. The sale deed was executed by defendant no.1 of 11 kanal 11 marla to Jaswinder Kaur, Sulochana Kaur and Santosh Kaur. The mutation had been sanctioned before filing of the suit and the plaintiff miserably failed to show that despite due diligence, he could not bring out the present amendment in the plaint while his earlier two applications already stood allowed on 10.2.2009 and vide order dated 17.9.2012. Reference can now be made to a Supreme Court judgment while

examining the provisions of Order 6 Rule 17 in the case of **Vidyabai and others vs. Padmalatha and another 2009 (1) RCR (Civil)**

763 observed in paragraph 14 of the judgment as under:

14.It is the primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled , the amendment is to be allowed.

However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.”

In view of the judgment in the case of **Vidyabai's case (supra)**, no case for interference in the order of trial Court is made out and the revision is dismissed.

30-10-2015
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(**RITU BAHRI**)
JUDGE