

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7554 of 2012 (O&M)
Date of Decision: February 21st, 2015

Darshan Lal

.....Petitioner

versus

Smt.Baljit Kaur and others

.....Respondents

CORAM: Hon'ble Mr. Justice Dr.Bharat Bhushan Parsoon.

Argued by: Mr.Ashish Gupta, Advocate for the petitioner.

Mr.P.K.Kataria, Advocate for respondents.

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Dr.Bharat Bhushan Parsoon, J.

1. Dismissal of the application for amendment of the plaint vide order dated 10.10.2012 (Annexure P-3) of the lower Court, is under challenge in this revision petition preferred by the plaintiff, petitioner herein.

2. A suit for seeking specific performance of agreement to sell dated 23.06.2008 regarding land in dispute, details of which have been mentioned in the plaint, is pending adjudication before the lower Court. In the plaint specific averment was made that Rs.20 lacs were paid in pursuance to the agreement to sell on 23.06.2008. This admission is sought to be deleted from the plaint.

3. There is figure of Rs.43 Lacs in the plaint claiming that this amount was paid. It is sought to be substituted by figure of Rs.23 Lacs by deletion of existing para No.6, it is sought to be substituted by paragraph as under:-

“ That a sum of Rupees Twenty Lacs (Rs.20,00,000/-) was to be paid by the plaintiff to the defendant on 01.11.2008 but the defendants have refused to receive the same in spite of the fact that the plaintiff made offer to the defendants to receive the said amount.”

4. Counsel for the revisionist has urged that this amendment is of importance for proper adjudication of the matter in controversy and is sought to be allowed.

5. Counsel for the respondents on the other hand has urged that when the amendment sought for, entirely changes the hue and shade of the case set up by the plaintiff and of admission already made, allowing of the amendment would cause great prejudice to the defendants.

6. During the course of arguments of counsel for the parties, it transpires that a clear case of payment of Rs.43 Lacs had been set up in the plaint towards sale consideration of the agreement to sell dated 23.06.2008. Now this admission is sought to be withdrawn without explaining the reason for the same. Now, it is claimed that in fact Rs.23 Lacs were paid by the petitioner-plaintiff and this mistake has occurred due to communication gap between the petitioner/plaintiff and his counsel.

7. A conjoint perusal of the plaint already on record alongwith averments in the application for amendment, leave no manner of doubt that there is neither any pictorial nor phonetic similarity between figure of Rs.23 Lacs and Rs.43 Lacs. It is also to be noticed that one paragraph is

completely sought to be deleted from the existing plaint, whereas an other para is sought to be substituted in place of the existing one and some additional pleadings are also sought to be offered. This cannot be labelled as a mere mistake. Rather entire case of the petitioner-plaintiff is sought to be changed by him.

8. Circumstances in which this application was moved are also relevant. Notice of the same has duly been taken by the lower Court. There is a clear averment in the plaint that Rs.20 Lacs were paid by the plaintiff to the defendants on 01.11.2008 against receipt which is attested even by the marginal witnesses. On the very first day of putting in their appearance in the suit, the defendants had moved an application calling upon the plaintiffs to produce such receipt dated 01.11.2008. It was subsequent to filing of this application by the defendants that the plaintiff had sought amendment in the plaint.

9. Observations of the lower Court in the impugned order on this count are reproduced as under:

“ The moving of this application shattered the slumber of plaintiff who then replied that he was going to move application for amendment of plaint as no such payment of Rs.Twenty Lacs was made by him to defendants on 01.11.2008 rather, allegedly, he had made such offer which was not accepted by the defendants. The circumstances therefore show the admission on the part of plaintiff that he had not paid Rs.20 Lacs on 01.11.2008 and therefore his pleadings regarding payment of total earnest money Rs.43 Lacs given in plaint are factually incorrect. By taking such pleading the plaintiff has caused accruing of substantial right in favour of defendants and he therefore cannot be permitted to withdraw the same as it will prejudice the case of defendants.”

10. The impugned order is not only well-written but is elaborate wherein discussion in facts as also of attending circumstances with law applicable, has effectively been made.

11. Keeping in view the facts and circumstances discussed above,

affirming the impugned order dated 10.10.2012 (Annexure P-3) of the lower Court, this revision petition, being devoid of any merit, is dismissed.

(Dr.Bharat Bhushan Parsoon)
JUDGE

February 21st, 2015
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