

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

CR No.7753 of 2013 (O&M)
Date of Decision: 09.02.2015

T.S. Pannu

. . . .Petitioner

Versus

Vijay Shankar and another

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mrs.H.K. Dhillon, Advocate,
for the petitioner.

Mr.Sanjay Majithia, Sr. Advocate, with
Mr.Rajesh Kumar, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 15.11.2013, dismissing the application filed by the plaintiff/petitioner under Order 6 Rule 17 to amend the plaint.

The facts given to me are that the petitioner entered into an agreement to purchase the disputed property from Vijay Shankar/respondent No.1 on 3.11.2000. According to the petitioner, the entire sale consideration was paid and in lieu thereof Vijay Shankar executed General Power of Attorney, affidavit and Will in favour of the petitioner, which was submitted by the petitioner to the Estate Officer, PUDA at that time. It is also submitted that the possession was also delivered at the time when the agreement to sell was entered into between the parties. Respondent No.2-Kulwant Kaur filed a suit for specific performance against respondent No.1 in

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authenticity of this document

the year 2005 on the strength of an agreement to sell between the parties in respect of the house in dispute. The petitioner tried to become a party in that suit but his application was dismissed and under a wrong advice, civil revision was filed before the District Judge, which remained pending for some time. Vijay Shankar/respondent No.1 did not contest the suit as he was proceeded against *ex parte* resulting into an *ex parte* decree dated 24.11.2009 passed in favour of Kulwant Kaur. The petitioner then filed a suit for specific performance in the year 2011 on the basis of agreement dated 3.11.2000 against Vijay Shankar and in that suit Kulwant Kaur filed an application under order 1 Rule 10 of the Code of Civil Procedure, 1908 [for short 'the CPC] to become a party. The said application was allowed. The petitioner filed an amended plaint on the ground that he did not specifically mention about the amendment which was sought by him except mentioning defendant No.2 in the plaint. Later on, the petitioner realized that the specific averments have to be made in the plaint so that the defendants may give specific relief and in view thereof filed another application under Order 6 Rule 17 of the CPC for amendment, which was contested by Kulwant Kaur and resulted into dismissal on 15.11.2013 against which the present revision petition has been preferred.

The petitioner has argued that the trial Court has erred in dismissing the application on the ground that since the issues have been framed and the case has been fixed for evidence, therefore, the trial has commenced and in view of proviso to Order 6 Rule 17 of the CPC, the plaintiff has failed to show due diligence for the purpose of seeking amendment. It is submitted that the petitioner was allowed to amend the plaint but due to oversight and

inadvertence on his part, facts regarding decree in favour of Kulwant Kaur could not be pleaded and even the said decree could not be challenged having obtained by way of fraud etc.

Learned counsel for respondent No.2 has submitted that the amendment, at this stage, cannot be allowed and the application has been rightly dismissed by the trial Court because the amendment would change the entire cause of action of the plaintiff as earlier it was only a suit for specific performance of the agreement to sell but now the petitioner is also challenging the decree passed in favour of Kulwant Kaur against Vijay Shankar in respect of the property in dispute of which she has become the owner as the sale deed has already been executed. It is also submitted that even the petitioner was not permitted to become the party in the suit filed by Kulwant Kaur as his application under Order 1 Rule 10 of the CPC was dismissed.

I have heard learned counsel for the parties and perused the record.

The facts are not much in dispute and the only issue involved in this case is as to whether the learned trial Court has rightly dismissed the application filed by the petitioner for amendment of the plaint, at the stage when the issues were already framed and the trial has allegedly begun. Order 6 Rule 17 of the CPC was amended w.e.f. 1.7.2002 by Act No.22 of 2002, in which proviso was added, which says that no application for amendment shall be allowed after the trial is commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of trial.

There is no dispute that Order 6 Rule 17 of the CPC is divided into two parts. The first part deals with a situation where application is filed before the trial has begun and the second part deals with a situation where application is filed after the trial has begun. Dealing with the first part, the Court is not required to ask the plaintiff/defendant to show due diligence for not filing the application before the trial had begun but in the second part, the party has to satisfy the Court that despite due diligence, the necessary pleadings could not taken either in the plaint or in the written statement. The question is whether this case deals with the first part or the second part of Order 6 Rule 17 of the CPC?

In my view, the present case falls within the ambit of first part of Order 6 Rule 17 of the CPC as merely by framing of issues after which no evidence has been led, the trial would not be deemed to have begun. The suit is at the stage of first part, therefore, the finding recorded by the trial Court that the petitioner has not acted with due diligence in filing the application for amendment of the plaint would not stand in his way. The second question thus would be as to whether the amendment is necessary for just decision of this *lis*?

Needless to mention that according to the petitioner, he had paid the entire sale consideration to Vijay Shankar/respondent No.1 at the time when the agreement to sell was entered into between the parties as Vijay Shankar had executed many documents in favour of the petitioner which was submitted by him to the Estate Officer, PUDA. Incidentally, the sale deed could not be executed or conveyance could not be granted in favour of the petitioner and in the meantime, Vijay Shankar alleged to have

entered into an agreement to sell with Kulwant Kaur though in the written statement filed to the suit by Kulwant Kaur, Vijay Shankar has denied to have executed any agreement to sell in her favour and has rather pleaded that he has been defrauded by Kulwant Kaur. The petitioner had tried to become a party in that suit but unfortunately, the Court did not agree and instead of filing revision before this Court, he had filed suit for specific performance in which Kulwant Kaur ultimately became a party on the ground that there is a decree in her favour and sale deed was registered in her favour therefore, she is a necessary party and the petitioner cannot be granted decree of specific performance as the suit property has already been sold.

Faced with this situation, the petitioner then moved an application to amend the plaint after the addition of Kulwant Kaur as defendant No.2 but due to lapse on the part of his counsel, the exact pleadings could not be brought in the plaint and only name of Kulwant Kaur was added as defendant No.2.

Later on it dawned upon petitioner that specific averments are required to be taken in the plaint in order to challenge the *ex parte* decree in favour of Kulwant Kaur on the basis of which she is claiming right over the property in dispute, therefore, the second amendment application has been filed which has been dismissed by the Court below.

In view of the aforesaid facts and circumstances, the application which has been filed by the petitioner should have been allowed and as such the present revision petition is hereby allowed and the impugned order is hereby set aside.

At this stage, learned counsel for respondent No.2 has earnestly made a request to issue a direction to the trial Court to decide the *lis* between the parties as early as possible preferably within one year.

Learned counsel for the petitioner has not shown any averseness to the request made by counsel for respondent No.2.

Thus, the trial Court, who is seized of the matter, is directed to decide the *lis* between the parties within a period of one year by giving short adjournments.

09.02.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**