

Civil Revision No.8262 of 2015 and
Civil Revision No.8371 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. Civil Revision No.8262 of 2015
Date of Decision: 14.12.2015

Baldev Raj

.....Petitioner

Vs

Kishori Lal and Another

.....Respondents

2. Civil Revision No.8371 of 2015

Baldev Raj

.....Petitioner

Vs

Kishori Lal and Another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Shiv Kumar, Advocate
for the petitioner.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

[1]. Vide this common order Civil Revision No.8262 of 2015 and Civil Revision No.8371 of 2015 are being disposed of as related issues are involved in both the petitions.

[2]. In Civil Revision No.8371 of 2015, order dated

16.05.2015 passed by Additional Civil Judge (Sr. Divn.) Mukerian, has been assailed whereby amendment of the written statement has been dismissed.

[3]. A suit for specific performance was filed by plaintiff Kishori Lal on the basis of agreement to sell dated 03.02.2010 against defendant No.1 Baldev Raj and defendant No.2 Sunita Devi. The suit property is 1 *Kanal* 1 *Marla* of land out of total 21 *Kanals* 13 *Marlas* of land situated in village Tohlu, Tehsil Mukerian, District Hoshiarpur. Sale deed dated 04.10.2010 executed by defendant No.1-Baldev Raj in favour of defendant No.2 Sunita Devi was also claimed to be null and void, illegal and ineffective against the rights of the plaintiff.

[4]. Defendants No.1 and 2 jointly contested the suit. They engaged one Advocate. Factum of sale deed dated 04.10.2010 was admitted to be correct. After having suffered admission in respect of correctness of sale deed dated 04.10.2010, defendant No.1 sought amendment in written statement under Order 6 Rule 17 read with Section 151 CPC, claiming the sale deed dated 04.10.2010 executed by defendant No.1 in favour of defendant No.2 to be null and void on the ground that on 02.04.2012, there was a compromise between defendants No.1 and 2, wherein it was agreed that defendant No.2 will return the land to defendant No.1. Thereafter defendant No.2 did not

agree. Defendant No.2 was to execute the sale deed in favour of defendant No.1.

[5]. Infact the amendment sought by defendant No.1 was contrary to the plea taken in the written statement, nor defendant No.1 could have challenged the sale deed in a suit for specific performance filed by the plaintiff without seeking declaration independently against defendant No.2. The said application was declined by the trial Court vide order dated 16.05.2010. Present revision petition has been directed against that order.

[6]. In the second case i.e. Civil Revision No.8262 of 2015, the petitioner has assailed the order dated 08.10.2015 passed by the Additional Civil Judge (Sr. Divn.), Mukerian whereby application filed by him for recalling Sunita Devi DW-1 for further cross-examination has been declined.

[7]. Learned counsel for the petitioner contends that in case amendment is allowed, no prejudice is going to be caused to the respondent-plaintiff. The amendment sought is claimed to be explanatory in nature and is not directed towards withdrawal of admission made in the pleadings, but only to explain the circumstances in which admission was made by the defendant No.1.

[8]. Learned counsel cites **Ram Niranjana Kajaria vs. Sheo**

Parkash Kajaria and others, 2015(4) RCR (Civil) 580 to contend that the petitioner does not wish to withdraw the admission but only an explanation is being pleaded disclosing the circumstances in which the defendant No.1 had to admit the factum of sale deed in the written statement.

[9]. I have considered the precedents cited on the subject.

[10]. The admission made in the pleadings cannot be withdrawn by way of amendment. Apparently, the petitioner wants to resile from the admission made in the written statement and also to impeach the credibility of defendant No.2 by means of recalling her for further cross-examination. Anything transpired between defendant No.1 and 2 cannot be made subject matter of the suit for specific performance in which plaintiff has nothing to do with *inter se* transaction between the defendants.

[11]. Even in the cited case claim for amendment was rejected. The facts of the present case do not evolve such a proposition in which the petitioner should be given a chance to explain *inter se* controversy, so far as right of the plaintiff in a suit for specific performance is concerned. Filing of revision petition for seeking recalling of defendant No.2 for further cross-examination shows that defendant No.1 is desperate to cull out something by invoking the process of law to seek opportunity to

adduce evidence which may further dilute the implication of admission made in the written statement.

[12]. Once the defendant No.1 has admitted the sale in favour of defendant No.2, apparently that sale was made in favour of defendant No.2 just to deprive the plaintiff from the fruits of agreement to sell dated 03.02.2010. Now by means of seeking clarification in the form of amendment, the petitioner wishes to project a case of high handedness of defendant No.2 on account of the compromise having not been honoured by her (defendant No.2).

[13]. The alleged compromise is dated 02.04.2012. The said compromise was never sought to be implemented by any process of the Court. In this way by way of aforesaid insertion in the written statement, the defendant No.1 wishes to challenge the sale deed in favour of defendant No.2 that too in a suit for specific performance filed by the plaintiff. Rights and liabilities *inter se* between co-defendants cannot be settled in a suit of plaintiff particularly when no such relief can be granted by the plaintiff to any of the co-defendants, nor the plaintiff was party to the alleged compromise dated 02.04.2012.

[14]. Having considered the controversy in its entirety, I am of the view that no ground is made out to allow the defendant No.1 to amend the written statement for withdrawal of admission

made in the written statement under the garb of the plea of amendment being only explanatory in nature, nor the defendant No.1 can be allowed to recall the defendant No.2 for further cross-examination as the entire exercise is directed towards causing prejudice to the plaintiff in a suit for specific performance.

[15]. In a view of aforesaid, no ground to interfere in the revision petition is made out, and the same is accordingly dismissed.

December 14, 2015

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**(RAJ MOHAN SINGH)
JUDGE**