

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

**CR No. 1214 of 2016 (O&M)
Date of decision: 17.02.2016**

Anoop Singh

..Petitioner

Versus

Surjit Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Manjit Saini, Advocate for the petitioner.

SHEKHER DHAWAN, J.(ORAL)

Present petition under Article 227 of the Constitution of India for challenging the order dated 08.01.2016 passed by Additional District Judge, Amritsar vide which the application under Order 6 Rule 17 CPC for amendment of written statement was dismissed.

Relevant facts for the purpose of decision of this petition; that a civil suit was filed by Surjit Singh and another against present petitioner-Anoop Singh for specific performance of agreement of sale dated 21.08.2003.

The suit was contested by defendant No. 2, inter alia, taking the plea that he had purchased the suit land from defendant No. 1 for a total sale consideration of ₹ 5,76,000/- on the basis of registered sale deed dated 12.12.2003. The land was under mortgage with the plaintiffs and there was no other encumbrance upon the suit land.

Trial Court accepted the contention of the plaintiffs that

there was an agreement of sale dated 21.08.2003 in favour of the plaintiffs. Appeal was filed by the present petitioner and an application dated 1.3.2013 was filed taking the plea that earlier a suit was filed to challenge the sale deed dated 12.12.2003 in favour of the present petitioner and the said suit was decided on 17.01.2011. The said judgment and decree was already exhibited during the trial as Exhibits D-8 and D-9, but the petitioner could not take a plea that present suit was barred on the ground of res-judicata and also barred under Order 2 Rule 2 CPC and that plea be allowed to be taken by amendment in the written statement. However, the said application was dismissed by Additional District Sessions Judge vide the impugned order.

Learned counsel for the petitioner mainly submitted that the proposed amendment was on the basis of existing facts which are not disputed and the petitioner just wanted to take the plea, though copies of judgment and decree are already available on the file as Exs.D-8 and D-9 and the Court below erroneously took the view that intention of the petitioner is to delay the proceedings and on that ground, the application was dismissed whereas, there is no such intention on the part of the present petitioner. The said order be set-aside.

Having considered the submissions made by learned counsel for the petitioner and after going through the material on the file, this Court is of the view that the Court below has mainly dismissed the application on the ground that the pleadings are to be amended so as to produce and prove Exhibits D-8 and D-9 which are already part of the judicial file. More so, the date of

decision of the said document is 17.01.2011 judgment and decree was passed by Additional District Judge, Amritsar is 20.12.2011. Meaning thereby, this fact was very much in the knowledge of the present petitioner before the Court below itself and even required action was taken by producing these documents on the file. However, no such plea was taken in the written statement nor any application for amendment of written statement was moved before the Court below and that is why, there is no justified reason for amendment of the pleadings before the Ist Appellate Court. The reasoning given by the Court of Additional District Judge while dealing with both these points is not disputed on facts available on the file. That being the position, the present petition is without any merit as there is no illegality in the impugned order. The Ist Appellate Court is to appreciate the entire material evidence available on the file as well as to test the correctness of judgement and decree. The petitioner wants that the judgment and decree dated 20.12.2011 be looked into in the light of judgment and decree (Ex. D-8 and Ex. D-9) having been passed by Civil Court earlier. The First Appellate Court shall certainly look into those documents as the same are part of judicial file. For that purpose, no amendment of written statement is required and that is why, the application for amendment of the written statement has been rightly dismissed by the Court below and the present petition is without any merit and the same stands dismissed.

February 17, 2016

Poonam (II)

POONAM SHARMA
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I attest to the accuracy and
integrity of this document
High Court Chandigarh

**(SHEKHER DHAWAN)
JUDGE**