

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

CR No.1420 of 2016(O&M)

Date of decision:25.7.2016

Jitender

....Petitioner

VERSUS

Raj Roop and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition has been directed against order dated 27.01.2016 (Annexure P-4) passed by Civil Judge (Senior Division), Panipat whereby an application filed under Order 6 Rule 17 read with Sections 151, 152, 153 and 153-A of the Code of Civil Procedure, 1908 for amending the plaint and the judgment and decree dated 09.12.2010 passed by the Civil Judge (Senior Division), Panipat has been allowed.

Raj Roop – respondent No.1 filed a suit against Jagpal Singh and others for possession by way of specific performance of agreement to sell dated 27.01.2005 purported to be executed by defendants No.1 and 2 wherein challenge has also been laid to sale deeds bearing No.1740 dated 10.03.2005 executed by defendant No.1 in favour of defendant No.3 and Vasika No.471/1 dated 23.07.2007 executed by defendant No.2 in favour of defendant No.5 (petitioner herein).

The suit filed by the respondent/plaintiff was decreed and it was held that sale deeds bearing No.1740 dated 10.03.2005 and Vasika

No.471/1 dated 23.07.2007 are set aside being wrong, illegal, null and void and not binding upon rights of the plaintiff.

The successful plaintiff filed an application for execution of the decree and in the proceedings, a report was received that particulars of Vasika No.471/1 dated 23.07.2007 are not correct. The respondent filed the instant application on the premise that due to typing mistake, Vasika No.471/1 dated 23.07.2007 was wrongly typed instead of Vasika No.771/1 dated 23.07.2007 in the plaint and as a result, the same error was carried forward in the judgment and decree dated 09.12.2010 and liable to be corrected.

The Court below after providing an opportunity to file reply and having heard counsel for the parties allowed the application by relying upon judgment of this Court Saudagar Singh Vs. Amir Singh and others, 2009(4) RCR (Civil) 638.

Counsel for the petitioner has submitted that the application for amendment was filed at a highly belated stage i.e. 9 years after institution of the suit and about 4 years after the *lis* was decided by the trial Court. It is further argued that as the present petitioner did not contest the suit under a bona fide impression that as the sale deed executed in his favour bearing No.771/1 dated 23.07.2007 is not under challenge, therefore, a serious prejudice is likely to be caused to the petitioner in case the impugned order is allowed to sustain.

I have heard counsel for the petitioner, perused the records but find that the petition sans merit and deserves to be dismissed.

The trial Court, in para 4 of the impugned order, after advertng to the ratio in Saudagar Singh's case (supra) has held that Vasika

number of sale deed was inadvertently mentioned as 471/1 dated 23.07.2007 instead of 771/1 dated 23.07.2007 and the same mistake was transported in the judgment and decree dated 09.12.2010. Further held that there is no dispute about the fact that both the parties were litigating qua the suit property involved in the case. The application for seeking correction of vasika number does not amount to claiming any new right in the property or claiming any right in the new property. The mistake committed by the applicant is clerical and typographical in nature which is liable to be corrected.

Counsel for the petitioner, on a pointed query by the Court, is fair enough to inform that no other sale deed except sale deed bearing No.771/1 dated 23.07.2007 was executed in favour of the petitioner in regard to part of the property, subject matter of the suit, filed by respondent – Raj Roop. It is also not denied that sale deed bearing No.771/1 dated 23.07.2007 was brought on record during the course of trial. As per the settled position in law, technicalities cannot be allowed to stand in the way of substantial justice. In case, plea of the petitioner is accepted that the respondent cannot be permitted to correct number of the sale deed which was wrongly mentioned as 471/1 in place of 771/1, it would amount to depriving the respondent/plaintiff of the fruits of the decree due to a typographical mistake which otherwise has no serious bearing on adjudication of contesting claims of the parties. Counsel for the petitioner has failed to cite any judgment contrary to what has been held by this Court in Saudagar Singh's case (supra).

In view of the above, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*. No order as to costs.

JULY 25, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no