

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.2028 of 2015(O&M)

Date of Decision:5.2.2016

Bijender Kumar @ Vinay

---Petitioner

vs.

Inder (since deceased) through his Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Chanakya Pandit, Advocate
for the petitioner

Mr. Rakesh Sharma, Advocate
for the respondents

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against order dated 17.10.2014 (Annexure P-2) passed by the Additional Civil Judge (Senior Division), Sohna, Gurgaon dismissing an application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure (in short "CPC") for amendment of the plaint.

The petitioner filed a suit for specific performance of the agreement to sell dated 25.6.2004 in respect of a residential plot. During pendency of the suit, it was revealed that respondent No. 2 has alienated the suit property to Premwati, respondent No. 3 vide sale deed bearing No. 7422 dated 16.3.2006. Premwati filed an application under Order I Rule 10 CPC for impleading her as a party which was allowed and the petitioner filed the amended title of the suit. Later, he filed an application for amendment of the plaint in order to challenge sale deed No. 7422 dated 16.3.2006 executed by respondent No. 2 in favour of respondent No. 3 and the same has been disallowed by the trial court primarily on the ground that the application is highly belated and the amendment sought is not necessary for determining the real question in controversy between the parties.

Counsel for the petitioner would submit that as the petitioner came to know about execution of sale deed by respondent No. 2 in favour of respondent No. 3 during pendency of the proceedings, the petitioner is entitled to amend the pleadings in order to assail the sale deed bearing No. 7422 dated 16.3.2006. It is further argued that in case the petitioner does not assail the said sale and the sale deed in favour of respondent No. 3 remains intact, claim of the petitioner seeking specific performance of the agreement may not be maintainable, as such the learned trial court has committed a serious error by holding that the amendment is not necessary for complete and effective adjudication of the matter in controversy, when the fact is otherwise.

Counsel for the respondents has supported the impugned order with the submissions that the petitioner became aware of the sale deed in

favour of respondent No. 3, the moment respondent No. 3 filed an application for impleading her as a party. The petitioner has already concluded his evidence and the case is fixed for evidence of the respondents. In case the proposed amendment is allowed, it would virtually lead to de novo trial and prolonging the adjudication.

I have heard counsel for the parties, perused the records more particularly the impugned order.

It is an undisputed position of the case that the petitioner has filed the suit for specific performance of the agreement purported to be executed by Inder (since deceased) on 25.6.2004. Smt. Bala daughter of Inder respondent No. 2 was impleaded as a party as Inder purportedly executed relinquishment/release deed bearing Wasika No. 2969 dated 27.10.2004 in favour of Smt. Bala. Smt. Premwati, respondent No. 3 filed an application for impleading her as one of the defendants by raising a plea that Smt. Bala has executed sale deed No. 7244 dated 16.3.2006 in her favour and the application was allowed. It appears that counsel representing the petitioner filed an amended title but failed to realize that without giving challenge to the sale deed executed by respondent No. 2 in favour of respondent No. 3 prior to institution of the suit, claim of the petitioner seeking specific performance of the agreement may not be tenable. The learned trial court has failed to appreciate that so long as the sale deed executed by respondent No. 2 in favour of respondent No. 3 is not set aside in lawful proceedings, the petitioner can neither seek specific performance of the agreement nor can become owner of the suit property. In this view of the matter, the amendment sought by the petitioner is necessary for

complete and effective adjudication of the matter in controversy. The mere delay in filing the application for amendment, in the circumstances of the present case, cannot be allowed to stand in the way of substantial justice more particularly in the circumstances that no prejudice would be caused to the respondents by delay and costs is panacea for many procedural lapses.

In view of what has been discussed hereinabove, the petition is allowed, the order dated 17.10.2014 (Annexure P-2) passed by the trial court is set aside and the application for amendment of the plaint is allowed subject to payment of costs of Rs. 5000/- to the contesting respondents. After completion of pleadings by the parties, the trial court shall proceed with the suit, in accordance with law.

(Rekha Mittal)
Judge

5.2.2016
paramjit