

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

CR No.3189 OF 2016
DATE OF DECISION : 5TH MAY, 2016

Gurcharan Singh

.... **Petitioner**

Versus

Sukhdev Kumar

.... **Respondent**

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes/No
2. To be referred to the Reporters or not ? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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Present : Mr. J. K. Singla, Advocate for the petitioner.

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DARSHAN SINGH, J.

1. The present revision petition has been preferred against the order dated 22.03.2016 passed by learned Additional Civil Judge (Senior Division), Phul in Civil Suit No.43 dated 31.03.2014 titled as Sukhdev Kumar versus Gurcharan Singh, whereby the application filed by respondent-plaintiff, for amendment of plaint, has been allowed.

2. The respondent-plaintiff has filed the suit for specific performance on the basis of agreement to sell dated 30.11.2009 executed by the petitioner-defendant in his favour for the sale of land measuring 10 Kanal 9 Marla as described in headnote of the plaint situated in village Kesar Singh Wala, Sub Tehsil Bhagta Bhaika, Tehsil Phul, District Bathinda. During the pendency of the said suit, respondent-plaintiff moved an application for amendment of the

plaint, pleading therein that due to typographical mistake the total sale price and the remaining amount required to be paid were wrongly mentioned.

3. The said application was contested by the present petitioner-defendant.

4. The learned trial court vide order dated 22.03.2016 allowed the application. Hence this revision petition.

5. I have heard Mr. J. K. Singla, Advocate for the petitioner and have carefully gone through the paper book.

6. Learned counsel for the petitioner contended that the learned Trial Court has wrongly allowed the application moved by the respondent-plaintiff for amendment of the plaint. He contended that there was no explanation as to why the wrong sale price and remaining amount to be paid was mentioned. He contended that the trial has already commenced when this application was filed. This plea was already available to the respondent-plaintiff at the time of filing of the original plaint.

7. He further contended that as per proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), the amendment in the pleadings can only be allowed before the commencement of the trial and not thereafter. He relied upon the case ***Vidyabai & ors. Versus Padmalatha & anr., 2009(1) RCR (Civil) 763.***

8. He further contended that the respondent-plaintiff has nowhere pleaded that in spite of due diligence he could not plead the

correct sale price and the remaining amount to be paid in the original plaint. He can not dispute that this fact was very much in his knowledge, thus he contended that the learned trial court has wrongly allowed the application moved by the respondent for amendment of plaint. He relied upon the case ***J. Samuel & others versus Gattu Mahesh & others, 2012(2) Civil Court Cases, 0252.***

9. I have duly considered the aforesaid contentions. The respondent-plaintiff has filed the suit for specific performance of the agreement to sell dated 30.11.2009. As per the application filed by the respondent for amendment of plaint, due to inadvertence in para No.2, 6 and prayer clause, it was wrongly mentioned that the agreement was executed for a sum of ₹70,000/-, whereas, the sale price was ₹7,00,000/- per acre. It was also wrongly mentioned in the plaint that a sum of ₹2,00,000/- was still to be paid. Whereas the total sale price of the suit land was ₹9,14,375/- and an amount of ₹5,00,000/- was paid as earnest money and the remaining amount to be paid was ₹4,14,375/-. The application was moved by the respondent for making these corrections/amendments with respect to the sale price and the remaining amount to be paid. In reply to the application the petitioner has denied the execution of any agreement to sell and receipt of the earnest money of ₹5,00,000/-. It was also alleged that the proposed amendment will change the nature of the suit and will cause irreparable loss to the petitioner-defendant.

10. The amendment sought by the respondent-plaintiff was only with respect to the correction of the total sale price and the

remaining amount to be paid. No other change in the original plaint was sought. The case of the respondent-plaintiff is based on agreement to sell dated 30.11.2009. The copy of the agreement to sell dated 30.11.2009 has been attached as Annexure P-2, which shows that the suit land was agreed to be sold for ₹7,00,000/- per acre. The total land was 10 Kanal 9 Marla so the total sale price was to be calculated as per ₹7,00,000/- per acre. It is also mentioned in the agreement that ₹5,00,000/- have been paid as earnest money so the remainder amount was also to be calculated accordingly. There appears to be inadvertent error in mathematical calculation of the total sale price and remainder mentioned in the plaint.

11. The Hon'ble Supreme Court in case ***Ramesh Kumar Agarwal vs Rajmala Exports Pvt. Ltd. and others 2012 (2) RCR (Civil) 739*** has laid down that ordinarily the Court must not refuse bonafide, legitimate, honest and necessary amendments and never permit malafide and dishonest amendments. It was further laid down that liberal approach should be the general rule, particularly in the cases where other side can be compensated with costs. Normally the amendments are allowed in the pleadings to avoid multiplicity of litigation. In case ***Chander Kanta Bansal v. Rajinder Singh Anand, 2008(2) R.C.R.(Civil) 801***, the amendment of the pleadings were sought after 18 years when trial was at the verge of completion. The Hon'ble Apex Court laid down that the amendment of pleadings can be allowed by the Court even after commencement of the trial where the Court comes to the conclusion that in spite of due diligence the

party could not have raised the matter before the commencement of the trial. The Hon'ble Apex Court further held that term "due diligence" means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs. In the instant case, as already mentioned, it appears that mistake in mentioning the sale price and remainder thereof has taken place due to wrong calculation of the total sale price as per the agreement to sell dated 30.11.2009. This fact could not be disputed at bar by learned counsel for the petitioner that the total sale price and remainder thereof, mentioned in the plaint, was not in consonance with the sale price mentioned in the agreement to sell dated 30.11.2009, thus the amendment sought by the respondent could not be stated to be malafide or dishonest, rather the same appears to be bonafide, legitimate and necessary to determine the real questions in controversy between the parties.

12. Learned counsel for the petitioner has contended that the evidence of the plaintiff has started and he has also filed his affidavit even then the mistake was not rectified, which shows the negligence on the part of the respondent and his counsel. The Hon'ble Supreme Court in case ***Mahila Ramkali Devi & ors. Vs. Nandram (D) through LRs & ors 2015 (3) 332 Civil Court Cases***, while dealing with the provisions of Order 6 Rule 17 CPC, has laid down that the Court always gives relief to amend the pleadings of the parties unless it is satisfied that the party applying was acting malafide or that his blunder has caused injury to the opponent which could not be

compensated for by an order of cost. It was further laid down that rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules or procedure. It was further laid down that power to grant amendment in the pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations. Again in case ***Abdul Rehman and Anr. vs Mohd. Ruldu & others 2012(4) R.C.R. (Civil) 481***, the Hon'ble Supreme Court has laid down that power to allow amendment is wide and can be exercised at any stage of proceedings in the interest of justice. All the amendments, which are necessary for the purpose of determining the real questions in controversy between the parties, should be allowed if it does not change the basic nature of the suit. The powers to allow amendment should be exercised in larger interest of doing full and complete justice between the parties.

13. In the instant case also the amendment sought by the respondent-plaintiff was bonafide, legitimate and necessary to determine the real questions in controversy between the parties. The said amendment has not resulted in loss or prejudice to the rights of the present petitioner. The amendment sought by the respondent-plaintiff was only the correction of the total sale price and remainder amount to be paid which is not going to change the basic character of the suit.

14. In case ***Mount Mary Enterprises Versus M/s. Jivratna Medi Treat Pvt. Ltd., 2015(2) RCR (Civil) 667***, the plaintiff has sought the amendment of plaint to incorporate the correct market value. The Hon'ble Apex Court held that the amendment made by the plaintiff should have been granted in view of the fact that the suit property was under-valued in the plaint and by virtue of amendment application the plaintiff wanted to correct the error and wanted to place correct market value of the suit property in the plaint. This authority is fully applicable to the facts of the instant case. In the instant case also the respondent-plaintiff wanted to incorporate the correct sale price and the remaining amount to be paid as per the agreement dated 30.11.2009. Admittedly, the total sale price and remainder amount mentioned in the original plaint was incorrect.

15. The cases relied upon by learned counsel for the petitioner are quite distinguishable on facts. In case ***Vidyabai & others (supra)*** the Hon'ble Apex Court, while referring to the proviso to Order 6 Rule 17, has laid down that after commencement of the trial, before allowing the amendment of pleadings, the court must come to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. In the instant case, no new plea is being added by way of amendment in the plaint. Only the wrong sale price and remainder amount mentioned in the plaint is sought to be corrected. As per the case of the respondent-plaintiff this has happened due to inadvertent mistake. It is a matter of mathematical calculation and anybody can

commit the mistake therein. This mistake in calculation could have escaped in spite of due diligence at the time of filing the original plaint. In case ***J. Samuel & ors. (supra)*** the amendment was sought in the plaint to incorporate the pleadings with respect to readiness and willingness of the plaintiff to perform his part of contract to meet out the mandatory requirements of Section 16(c) of the Specific Relief Act, which was material amendment and the new plea was being added. So both these authorities are of no help to learned counsel for the petitioner.

16. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the discretion exercised by learned Trial Court in allowing the application moved by the respondent-plaintiff for the amendment of the plaint. Resultantly, the present revision petition is without any merits and the same is hereby dismissed.

5th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE