

Civil Revision No.4227-2013

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

**Civil Revision No.4227-2013 (O & M)
Date of Decision: 09.02.2016**

Meharban Singh Sodhi

... Petitioner (s)

Versus

Silver City Construction Ltd. and another

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. D.R.Bansal, Advocate,
for the petitioner.

Mr. Sherry K. Singla, Advocate,
for the respondents.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant civil revision has been filed under Article 227 of the Constitution of India read with Sections 115 and 151 CPC for setting aside the order dated 31.05.2013 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Derabassi whereby application under Order 6 Rule 17 CPC moved by the petitioner for amendment of plaint has been dismissed.

Brief facts necessary for disposal of the present petition are to the effect that the petitioner has filed a suit for mandatory injunction

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for issuance of direction to the respondents-defendants to deliver possession of plot No.191, measuring 1050 square yards at Silver City, Dera Bassi after receiving the balance amount of ₹21,60,000/- and further for consequential relief of permanent injunction restraining the defendants from alienating the plot in question to anybody else except the petitioner. The respondents put in appearance and filed written statement. From the pleadings of parties, issues were framed. On 16.04.2012, none appeared on behalf of the respondents and they were proceeded against *ex parte*. During the pendency of suit, the original plaintiff died on 15.01.2011 leaving behind the sole legal heir i.e. petitioner herein. On perusal of the written statement, the petitioner came to know that situation of the plot has wrongly been mentioned in the plaint as Silver City, Derabassi, District Mohali whereas it is Silver City Zirakpur, District Mohali. The aforesaid inadvertent wrong mentioning was in the head-note, para nos.2, 3 as well as 9 and prayer clause of the plaint. The petitioner moved application under Order 6 Rule 17 CPC for amendment of plaint which has been dismissed vide impugned order dated 31.05.2013 (Annexure P-1). Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that the proposed amendment is sought only for correction of a typographical/clerical mistake and the petitioner wants to substitute the words “Silver City Derabassi” with “Silver City, Zirakpur” in the

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existing plaint wherever it appears including the title of the suit.

Per contra, learned counsel for the respondents has vehemently opposed the contentions of learned counsel for the petitioner and contended that now at belated stage if the proposed amendment is allowed, serious prejudice would be caused to the respondents

I have considered the rival contentions of learned counsel for the parties.

The amendment is sought to replace the words “Silver City Derabassi” with “Silver City, Zirakpur” on the ground that due to inadvertent typographical/clerical mistake, the words “Silver City Derabassi” have been mentioned in the plaint whereas the same are “Silver City, Zirakpur”. The case is at the stage of evidence of the plaintiff and learned counsel for the respondents has failed to show as to what prejudice would be caused to the respondents, if application for amendment is allowed. The proposed amendment will not change the nature of suit in any manner, rather it will be necessary for the just decision of the case as the Silver City is situated at Zirakpur and not at Derabassi. For the fault or wrong advice of counsel or mistake in typing, a party should not suffer. A party must not be victimized owing to improper legal advice. In the present case, the amendment, as sought, appears to be a typographical mistake and instead of writing “Silver City, Zirakpur”, words “Silver City Derabassi” have been typed. It is also not the stand of the respondents in written statement or reply to the application for amendment that suit property has been wrongly

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mentioned. It appears that the respondents-defendants have only relied upon hyper-technical grounds and did not make the picture clear in the written statement. The amendment can be allowed, if it can be made without injustice to the other side.

Consequently, the revision petition is allowed, the impugned order dated 31.05.2013 (Annexure P-1) dismissing the application of the petitioner-plaintiff for amendment of plaint is set aside and application of the petitioner for amendment of plaint is allowed. The petitioner will be entitled only to substitute the words “Silver City Derabassi” with “Silver City, Zirakpur” wherever the same appear in the plaint including head-note and prayer clause. The amended plaint, if not already on record, shall be filed by the petitioner within three weeks from the date of receipt of copy of this order and respondents will be at liberty to file written statement, if any, to the amended plaint within two weeks thereafter.

09.02.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge