

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 440 of 2016

Date of Decision: 22.01.2016

Smt. Dhan Dei and Another

... Petitioner(s)

Versus

Sanjiv

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Nishant Raj, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 24.9.2015, passed by learned Civil Judge (Junior Division), Sonipat, whereby an application under Order 6 Rule 17 CPC was accepted.

Relevant facts of the case that plaintiff moved an application for amendment of the plaint on the ground that an agreement of sale dated 23.8.2013 was executed by the present petitioner for total sale consideration of ₹ 3,15,000/- and earnest money of ₹ 1,02,500/- was paid and possession was handed over to the plaintiff. The target date for execution of the sale deed was fixed for 23.10.2013. Thereafter, plaintiff came to know that defendant No.1, in

collusion with defendant No.2, executed sale deed for the said property in favour of defendant No.2. Plaintiff filed suit for permanent injunction. Plaintiff moved an application for converting the suit for permanent injunction into suit for specific performance and for declaration. The defendant contested the application taking the plea that as per version of plaintiff, sale deed was to be executed and registered on 23.10.2013. However, plaintiff filed suit for permanent injunction only, thereby relinquishing his claim regarding enforcement of agreement of sale under Order 2 Rule 2 CPC and as such, application for amendment was not maintainable. The Court below, after considering these facts, accepted the application for amendment of plaint.

Learned counsel for the petitioner submitted that as sale deed was to be executed on 23.10.2013 and plaintiff filed suit for permanent injunction only, thereby relinquishing his claim regarding enforcement of agreement of sale and receipt dated 23.8.2013. As per provisions of Order 2 Rule 2 CPC, such a plea cannot be allowed to be taken by way of amendment of plaint. So, the present petition be accepted and order dated 24.9.2015 be set aside.

Having considered the submissions made by learned counsel for the petitioner and having gone through the facts of the case, this Court is of the considered view that certain dates of events are most relevant for the purpose of decision of application under Order 6 Rule 17 CPC. The alleged agreement of sale was executed on 23.8.2013. The target date was fixed to be 23.10.2013. Civil suit for permanent injunction was filed on 7.9.2013 and application for

amendment of plaint was filed on 15.10.2015.

The most important fact relevant in this case that alleged agreement was executed on 23.8.2013 and even application for amendment of plaint was filed within a period of limitation to seek specific performance of the said agreement. Application for amendment of the plaint was filed as defendant No.1 executed sale deed in favour of defendant No.2 during the intervening period. Such an amendment, being amendment of plaint and conversion of suit from permanent injunction into suit for specific performance, has become essential with the subsequent development. Law on this point is settled that the amendments, which are relevant for the just decision of the case, must be allowed. The Court below, by placing reliance upon the judgment rendered by Hon'ble the Supreme Court in ***Revajeetu Builders and Developers v. Narayanaswami and Sons and Others 2010(1) Civil Court Cases 001(SC):2010(1) Apex Court Judgments 023 (SC):(2009)10 SCC 84***, rightly decided the controversy that in such cases application for amendment should be allowed. There is absolutely no illegality in the order under challenge.

Present petition is without any merit and the same stands dismissed, *in limine*.

(Shekher Dhawan)
Judge

January 22, 2016

"DK"