

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

CR No.4460 of 2015
Date of decision : 25.10.2016

Vijay Kumar

...Petitioner

Versus

Parkash Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rakesh Chopra, Advocate for the petitioner.

Mr. Kunal Dawar, Advocate for respondent Nos.1 and 2.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order dated 21.05.2015, whereby the application for incorporation of the amendment in the replication during the final stage of the suit, has been declined.

Mr. Rakesh Chopra, learned counsel appearing on behalf of petitioner-plaintiff submits that petitioner-plaintiffs had instituted the suit for recovery of the amount as per the agreement to sell dated 02.08.2004 instead of specific performance. As per the terms and conditions, stipulated date for execution and registration of agreement to sell was 22.04.2005 and the petitioner-plaintiffs appeared on 22.04.2005 as well as on 25.04.2005. However, in the replication, plaintiffs sought deletion of lines starting from No.18 at page No.5 i.e. date 25.04.2005 mentioned in para No.6 of the

plaint, which is a result of clerical and inadvertent error on the part of computer operator. The affidavit is dated 22.04.2005, so there is no question of marking the presence on 25.04.2005. This aspect has not been examined by the Court below. Line in the replication is sought to be deleted. He further submits that the said amendment has been sought because same is due to the clerical error. The fact which sought to be deleted are contradictory as mentioned in affidavit dated 25.04.2005 Ex.P3, Notice Ex.P4 which is dated 25.05.2005 also contains the factum of affidavit dated 25.04.2005, apart from 22.04.2005. He further submits that he would not lead any fresh evidence in this regard.

Per Contra, Mr. Kunal Dawar, learned counsel appearing on behalf of respondent Nos.1 and 2 submits that aforementioned application is nothing but an attempt to wriggle out of the admission in the plaint. Replication is not part of the pleading where there is material contradiction which cannot be rectified as valuable right has been accrued. Stand was taken that it was only 22.04.2005, therefore, date of 25.04.2005 is imaginary. He further submits that order under challenge is perfect, legal and justified. There is no illegality and perversity. After amendment of the Code of Civil Procedure, the amendment in the replication, once the trial has begun, cannot be permitted and thus urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submission of Mr. Rakesh Chopra, for, particularly he suffered statement after getting instructions from the client, that he would not lead any fresh evidence. Trial

Court would look into the matter by examining oral and documentary evidence for the purpose of adjudication of the lis i.e. whether applicant-petitioner has been able to lead evidence in support of aforementioned averments or not. Suit is only for the recovery of the amount but not for specific performance. It is in this background of the matter, amendment sought in the replication would be necessary.

Accordingly, impugned order dated 21.05.2015 is set aside.

Application (Annexure P-2) is hereby allowed.

Resultantly, revision petition stands allowed with a direction that the plaintiff would not lead any fresh evidence.

25.10.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No