

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No.5416 of 2016(O&M)
Decided on.24.08.2016.

Pargat Singh

.....Petitioner

Versus

Sawraj Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.V.K.Sandhir, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 02.08.2016 passed by the learned Civil Judge (Jr. Division), Ajnala, vide which the application moved by the petitioner-plaintiff under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short C.P.C.) for amendment of the plaint has been dismissed.

2. Petitioner has filed the suit for possession by way of specific performance of the agreement to sell dated 09.07.2015 allegedly executed by defendant in his favour with respect to the suit property i.e. a plot measuring 6 Marlas situated at Village Chogawan, Tehsil Ajnala, District Amritsar with alternative relief of recovery of Rs. 6 lacs i.e. Rs. 3 lacs as earnest money and Rs. 3 lacs as damages.

3. Petitioner has sought the amendment of the plaint for introducing the relief for mandatory injunction directing the defendants to provide/left 100 feet passage on the western side of the suit property as

per the agreement to sell dated 09.07.2015.

4. The application moved by the petitioner for amendment of the plaint has been dismissed by the learned trial Court. Hence this revision petition.

5. I have heard Mr. V.K.Sandhir, Advocate, learned counsel for the petitioner and have meticulously gone through the paper book.

6. Initiating the arguments, learned counsel for the petitioner contended that in the agreement dated 09.07.2015, the respondent-defendant has mentioned 100 feet passage on the western side of the plot in dispute. Now, the plaintiff wants to seek a decree for mandatory injunction directing the defendants to provide/left 100 feet passage on the western side of the suit property as per agreement to sell dated 09.07.2015.

7. I have duly considered the aforesaid contentions.

8. There is no dispute with the proposition of law that the amendment of pleading can be allowed at any stage of the suit if the said amendment is necessary for determining the real question in controversy however, subject to fulfilment of the pre-requisites provided under Order 6 Rule 17 of the CPC.

9. Plaintiff-petitioner has filed the suit for specific performance of the agreement to sell dated 09.07.2015. Defendant-respondent appeared in the trial Court and suffered the statement admitting the claim of the plaintiff that he is ready to execute the sale deed in favour of the plaintiff as per the agreement to sell dated 09.07.2015. After the statement was made by defendant admitting the claim of the plaintiff, he moved the present application for amendment of the plaint seeking the relief of mandatory injunction directing the defendant to provide 100 feet wide

passage on the western side of the plot in dispute. This fact could not be disputed at the time of arguments by learned counsel for the petitioner that the said space on the western side of the plot in dispute is not owned by the respondent. Rather, the same belongs to some Amrik Kaur. Moreover, in the agreement to sell dated 09.07.2015 only this fact is mentioned that there is a passage on the western side of the plot in dispute. There is no term and condition in the agreement dated 09.07.2015 that passage towards western side belongs to defendant-respondent and he will left/provide the passage on the western side of the plot for plaintiff. It is also not practically possible as the land on the western side of the plot does not belong to defendant. So, the application for amendment of plaint moved by petitioner was totally misconceived and has been rightly dismissed by the learned trial Court.

10. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order passed by the learned trial Court, which does not call for any interference by this Court.

11. Thus, the present revision petition having no merits, is hereby dismissed.

24.08.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No