

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5814 of 2015 (O&M)

Date of decision: 3.2.2016

Om Parkash

.....Petitioner(s)

Versus

Vinod and others

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

* * *

Present: Mr. Namit Khurana, Advocate for the petitioner.

Mr. P.S.Saini, Advocate for the respondents.

Darshan Singh, J.

1. The present civil revision petition has been preferred against the order dated 19.8.2015 passed by the Court of learned Civil Judge (Senior Division), Yamunanagar at Jagadhri whereby the application filed by the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter called 'the CPC') for amendment of plaint has been dismissed.

2. The plaintiff-petitioner has filed a suit for declaration that he is owner in possession of the land measuring 83 kanals 10 marlas detailed and described in the head note of the plaint situated at village Sandhala, Sub Tehsil Radaur, Tehsil Jagadhri, Distt. Yamuna Nagar. He has challenged the sale deeds dated 9.8.2011 allegedly executed by the plaintiff in favour of defendant No.1 and subsequent sale deed dated 19.8.2011 executed by defendant No.1 in favour of defendant No.2 and consequent mutations.

3. The plaintiff moved the application for amendment of the

plaint alleging therein that defendants No.1 and 3 have played fraud upon him. He was having faith in them. They obtained his signatures on various papers but due to inadvertence and bona fide typographical error in paras No.5 to 11 of the plaint, defendant No.2 has been typed instead of defendant No.1. The said mistake was revealed while preparing the affidavit for evidence. Now the plaintiff wants to rectify the said mistake by mentioning defendant No.1 in place of defendant No.2 in paras No.5 to 11 of the plaint.

4. This application has been contested by the respondents on the ground that the issues in the case have already been framed and the case was adjourned for the evidence of the plaintiff thrice and thereafter, this application was moved only to fill up the lacunae and to cause delay in the proceedings of the case.

5. The learned trial Court has dismissed the application vide impugned order dated 19.8.2015. Hence, this revision petition.

6. I have heard Mr. Namit Khurana, Advocate, learned counsel for the petitioner, Mr. Pritam Singh Saini, Advocate, learned counsel for the respondents and have carefully gone through the paper book.

7. Learned counsel for the petitioner contended that the amendment sought is only of a formal nature. Instead of defendants No.1 and 3, defendants No.2 and 3 have been wrongly mentioned in para No.5 to 11 of the plaint due to oversight and inadvertently. In fact defendant No.2 is a subsequent purchaser which shows a bona fide mistake in the pleadings.

8. On the other hand, Mr. P.S. Saini, learned counsel for the

respondents, contended that the issues in this case were framed on 16.2.2015. Thereafter, the case was adjourned for plaintiff's evidence for 9.4.2015, 16.7.2015, 20.7.2015 and 29.7.2015 but no witness was examined and this application was moved just to delay and prolong the case and to fill up the lacunae. So, the application has been rightly dismissed.

9. I have duly considered the aforesaid contentions.

10. It is settled principle of law that the Court should be liberal in granting permission to amend the pleadings for the purpose of determining the real question in controversy between the parties. In the instant case, it is the case of plaintiff that fraud was played upon him in procuring the sale deed by defendants No.1 and 3 and defendant No.2 is the subsequent vendee but due to inadvertent typographical mistake in para No.5 to 11 it has been mentioned that fraud has been played by defendants No.2 and 3 instead of defendants No.1 and 3. Admittedly, defendant No.2 is the subsequent vendee who has purchased the land from defendant No.1. Thus, the mistake in para Nos.5 to 11 of the plaint mentioning the allegations against defendants No.2 and 3 instead of defendants No.1 and 3 appears to be a bona fide mistake which is necessary to be corrected for determining the real controversy between the parties. The proposed amendment is not going to change the nature of the suit nor it will render any prejudice to the defendant-respondents in their defence.

11. Thus, in my opinion, the application filed by the petitioner for amendment of plaint has been wrongly dismissed by the learned

trial Court.

12. Hence, the present revision petition is hereby allowed.

The application filed by the petitioner for amendment of the plaint stands allowed subject to ₹ 10,000/- as costs.

February 03, 2016
ps

(DARSHAN SINGH)
JUDGE