

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

C.R. No.6632 of 2016

Date of Decision.03.10.2016

Usha Rani

.....Petitioner

Vs.

Ram Rati and others

.....Respondents

Present: Mr. Amit Kumar Jain, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of 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?

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application seeking direction to the respondent-defendant No.1 to strike out the averments made in paragraph (v) of preliminary objection No.7 in the amended written statement by incorporating the previous one, has been dismissed.

Mr. Amit Kumar Jain, learned counsel appearing for the petitioner-plaintiff submits that the petitioner-plaintiff had filed suit for specific performance of the agreement to sell and on the basis of information received under RTI, he moved application for amendment of the plaint by incorporating paragraph 11A and 11B. The same was allowed. Though the defendant filed the written statement but withdrew certain paragraphs from the unamended written statement. Such act is not permissible in law as it amounts to departure from the previous admission.

In support of his contention, he relies upon judgment of Hon'ble Supreme

Court in *Gurdial Singh Vs Raj Kumar Aneja 2002(1) RCR (Rent) 194*, thus, urges this Court for setting aside the impugned order being illegal, perverse, much less, erroneous.

I have heard learned counsel for the petitioner and appraised the paper book. The paragraph (v) of the preliminary objection in the unamended written statement reads thus:-

“(v) That in July 2008 Pooran Singh and his family members asked defendant No.1 to come to the Court premises at Rewari for preparation of some affidavits and papers for obtaining physical possession of the plot. Defendant No.1 carried the original allotment letter, receipt etc. and other papers and the same were taken by them for getting prepared affidavit etc. However, suddenly they stated that the original allotment letter etc. had been lost. Defendant No.1 tried her best to search the said documents but the same could not be found whereupon she made a complaint about it to the local police but the said documents could not be traced. It appears that Pooran Singh and his family members had retained or got hold all the said original documents and plaintiff is trying to misuse the same. Defendant No.1 worked in the house of the said Pooran Singh as maid servant for some time more. Defendant No.1 came to know that Pooran Singh had become quite ill. In the meanwhile, defendant No.1 obtained actual physical possession of the said plot from defendant No.3 with the help of her relatives and conveyance deed bearing vasika No.15428 dated 01.10.2008 was executed and registered in her favour by

HUDA.”

Whereas in the amendment written statement reads thus:-

“(v) That defendant No.1 worked in the house of the said Pooran Singh as mate servant till the year 2007. Defendant No.1 came to know that Sh. Pooran Singh had become quite ill. In the meanwhile, defendant No.1 obtained actual physical possession of the said plot from defendant No.3 with the help of her relatives and conveyance deed bearing vasika No.15428 dated 01.10.2008 was executed and registered in her favour of HUDA.”

On conjoint reading of the aforementioned paras, the pith and substance is that the earlier defendant did not have the original documents with regard to allotment but now she had stated that she got the conveyance deed in her favour. In fact, in suit for specific performance, the petitioner-plaintiff has to prove the requirement of law i.e. Section 16(c) of the Specific Relief Act, 1963 and take benefit of Section 16 in case he is able to prove. On reading of both the paragraphs, the fact remains that defendant is the owner. In my view, such act would not tantamount to withdrawal of any admission which has prejudiced the rights of the petitioner-plaintiff. The petitioner can put all the questions in cross-examination, who instead of relying upon such trivial issues should focus upon the main case.

Keeping in view the peculiar facts and circumstances of the case, I am of the view that the ratio decidendi culled out in the judgment of the Hon'ble Supreme Court in **Gurdial Singh's case** (supra) would not apply to this case as no prejudice has been caused to the petitioner-plaintiff.

I do not find any reason to differ with the order under

challenge, much less, the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

October 03, 2016

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No