

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

217

CR-6965 OF 2015 (O&M)

Date of Decision: 15.01.2016

ASHWANI KUMAR

---Appellant

Versus

SAROJ AND AND ORS.

--Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. S.R. Hooda, Advocate
for the petitioner.

Mr. Manoj Chahal, dvocate
for the respondents.

REKHA MITTAL, J.

- 1) The present petition lays challenge to order dated 29.09.2015 (Annexure P7) passed by the Civil Judge (Junior Division) Bhiwani, whereby application filed by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (in short 'CPC') for amendment of the plaint has been dismissed.

2) A brief backdrop of the case is that the petitioner filed a suit for recovery of Rs.5,56,250/- i.e. Rs.5 lacs towards principle and Rs.56,250/- towards interest along with prayer for grant of pendente lite and future interest on the premise that the respondents/defendants entered into an agreement to sell land measuring 16 kanals 12 marlas along with all rights appurtenant thereto at the rate of Rs.14 lacs per acre and agreement to sell was reduced into writing on 28.6.2010. The date for execution of the sale deed was fixed for 23.12.2010. The petitioner went to the office of Sub-Registrar, Bawani Khera along with balance sale consideration and other necessary expenses on 23.12.2010 for registration of the sale deed but the respondents did not turn up to perform their part of the agreement. On 24.12.2010, the petitioner met the respondents and enquired as to why they had not come to the office of Sub Registrar, Bawani Khera for execution of the sale deed but they did not give any proper and satisfactory reply. After a week, the petitioner came to know that one Girdawar son of Sh. Bhana and others have filed a civil suit for declaration in respect of the suit land against the respondents and others and is pending in the Court of Additional Civil Judge, Bhiwani wherein the defendants therein were restrained from alienating the suit land. The petitioner met the respondents and enquired from them about the aforesaid civil suit on which they refused to execute and get the sale deed registered in favour of the petitioner by saying that order of status quo regarding alienation of suit land has been passed in Civil suit No.246 of 2010. It is further averred that as title of the respondents in respect of the suit land has become subjudice and no steps have been taken by them for vacation of ad interim injunction and much time was likely to be

taken for final decision of the said suit, the petitioner could not wait indefinitely so he filed the suit for recovery of earnest money, Rs.5 lacs along with interest at the rate of 15% per annum.

3) The respondents filed the written statement admitting the factum of execution of the agreement as well as the terms and conditions incorporated therein. However, they raised the plea that one Girdawar son of Bhana has filed a civil suit in respect of the land in question wherein the Civil Judge, Bhiwani has directed the parties to maintain status quo regarding alienation of the suit property on 13.8.2010. It is further pleaded that agreement between the parties is frustrated due to civil Court's order.

4) The petitioner filed the application seeking amendment of the plaint and by way of the proposed amendment, he prayed for amending the suit to seek relief of possession by way of specific performance of the contract/agreement of sale and recovery of money in the alternative. He prayed for making necessary amendments in the head note, body of the plaint as well as in the prayer clause.

5) The application filed by the petitioner, after getting reply from the respondents, did not find favour with the trial Court and the same was dismissed vide order dated 29.11.2015.

6) Counsel for the petitioner contends that the learned trial Court earlier allowed the prayer of the petitioner for amendment of the plaint vide order dated 11.9.2015 (Annexure P4) but later dismissed his application by passing the impugned order. It is further contended that the petitioner filed

the suit for recovery under compelling circumstances as one Dilawar initiated litigation in respect of the suit land against the respondents and others in which the trial Court passed an order of status quo in regard to alienation of the suit land. Counsel would urge that as the respondents have admitted execution of the agreement to sell and so also filing of suit by Dilawar Singh and order of injunction passed by the Court in the said suit, the trial Court has committed a gross error in dismissing the application for amendment when otherwise the suit is at its initial stage. It is further argued that amendment of a plaint can be allowed even to the extent of changing nature of the suit if the amendment is necessary to curtail multiplicity of proceedings. The last submission made by counsel is that power to grant amendment of pleadings is intended to serve the needs of justice and is not circumscribed by any narrow or technical limitations. In support of his contentions, he has relied upon judgments of the Supreme Court of India **“Sampath Kumar Vs. Ayyakannu and another 2002 Volume 4 RCR (Civil) 566” and “Mahila Ramkali Devi and others Vs. Nandram (D) through LRs. and others 2015 Volume 5 RCR (Civil) Page 562.**

7) Counsel for the respondents, on the other hand, has supported the impugned order. It is submitted that the trial Court never permitted the petitioner to amend the plaint vide order dated 11.9.2015 Annexure P4. The petitioner earlier filed an application dated 21.1.2014 seeking issuance of direction to the respondents to get the sale deed executed and registered in terms of agreement dated 28.6.2010. Prior thereto, on 9.4.2012, the respondents moved an application that they are willing to execute and

register the sale deed in accordance with the terms of the agreement in question. The petitioner opposed the application filed by the respondents on the ground that Girdawar and others have challenged title of the respondents and hence execution and registration of sale deed without final decision of the suit would not be proper. On 11.9.2015, counsel for the petitioner and respondents withdrew their applications dated 21.1.2014 and 9.4.2012 respectively. It is vehemently argued that in view of conduct of the petitioner in filing a suit for recovery of earnest money along with interest instead of seeking specific performance of the agreement to sell and his subsequent conduct pointed out hereinbefore, the petitioner cannot be allowed to amend the plaint to seek specific performance of the agreement to sell.

8) I have heard counsel for the parties and perused the records.

9) On due consideration of rival submissions made by counsel for the parties, it becomes an admitted position of the case that the petitioner filed the suit for recovery of the earnest money along with interest instead of specific performance of the agreement to sell, may be, because of there being a dispute between the plaintiffs of civil suit no.246 of 2010 and the respondents and others. During pendency of the suit, the respondents by way of an application offered to execute and register the sale deed in favour of the petitioner but he did not agree for the same as the civil suit filed by Dilawar was still waiting final adjudication.

10) In a suit for specific performance of the agreement, the plaintiff is required to plead and prove that he always remained ready and willing to perform his part of the agreement from the date of contract between the

parties till the rights of the parties are finally decided by a competent Court of law. As soon as the petitioner decided to seek the alternative relief of recovery and instituted the suit for the said purpose, he has lost his right to seek specific performance of the agreement, a relief which is discretionary in nature.

11) This apart, the subsequent conduct of the petitioner in not accepting the offer given by the respondents to execute the sale deed in his favour despite filing of an application by the petitioner for issuance of direction to the respondents to get the sale deed executed and registered in his favour, has put a seal on his previous conduct that he was no longer interested in seeking specific performance of the agreement and thus opted to file a suit for recovery. In this view of the matter, I do not find any merit in the contentions of the petitioner that the learned trial Court has committed any error much less illegality in rejecting plea of the petitioner for amendment of the plaint.

12) To be fair to the petitioner, one of the contentions raised by counsel is that the learned trial Court permitted the petitioner to amend the plaint vide order dated 11.9.2015 (Annexure P15). The plea of the petitioner in this regard is not only misleading but misconceived as well. A plain reading of order dated 11.9.2015 makes it apparent that on request made by counsel for the petitioner for filing an application for amendment of the plaint the Court adjourned the case for filing the said application with a direction that only one opportunity shall be provided in this regard.

13) So far as the judgments referred to by counsel for the petitioner, there cannot be any dispute about the ratio laid down therein but these judgments have got no bearing on the facts of the case in hand in view of the discussion made hereinabove.

14) For the aforesaid reasons, finding no merit, the petition is dismissed.

(REKHA MITTAL)
JUDGE

15.1.2016
SwarnjitS