

Civil Revision No.7071 of 2012

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

Civil Revision No.7071 of 2012

Date of decision: 08.02.2016

Daljit Kaur

....Petitioner

Versus

Darshan Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the 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 ?

Present: - Mr. Divanshu Jain, Advocate, for the petitioner.
Mr. Sumit Jain, Advocate, for
Mr. Pankaj Jain, Advocate, for the respondents.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition has been filed under Article 227 of the Constitution of India has been filed for setting aside the order dated 15.10.2012 passed by learned Civil Judge (Senior Division), Mohali whereby the application moved by the petitioner-plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint, has been dismissed.

Brief facts of the case are that petitioner-plaintiff filed a suit for declaration against the respondents-defendants on the ground that plaintiff continues to be owner in possession of half share of 120-370 share out of land comprised in khasra No.313(2-0), 307(4-0), 308(4-0), 309(4-0), 310(4-0) situated in Village Behlolpur, Tehsil Kharar now

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Tehsil Mohali as entered in jamabandi for the year 2003-04, thus, sale deed dated 30.10.1985 executed by defendant No.1 in favour of defendant No.2 is illegal, null and void and liable to be set aside and does not affect the rights of the plaintiff. Upon notice, defendants appeared and filed written statement. Petitioner filed replication to the written statement. Subsequently, petitioner moved an application under Order 6 Rule 17 CPC for amendment of the plaint, same has been dismissed by the trial Court vide impugned order. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for petitioner vehemently contended that the impugned order passed by the trial Court is based on mere surmises, conjectures and wrong reasons, thus, not tenable in the eyes of law. Learned counsel for the petitioner contends that initially the suit was filed on the basis of the copy of sale deed supplied to her by the office of Sub-Registrar, Kharar, which was already on record as Ex.P4. However, defendants in their evidence produced the copy of the sale deed Ex.PX showing different property in addition to the one existing in the copy of sale deed produced by the plaintiff. Therefore, due to subsequent event, petitioner filed the application for amendment of the plaint, which has wrongly been dismissed by the trial Court.

On the other hand, learned counsel for the respondents contended that application for amendment was filed with a malafide

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intention to prolong the litigation. At the time of filing the suit, plaintiff had full knowledge of the land sold, including khasra No.297 through his special power of attorney, defendant No.1 to defendant No.2. The amendment sought to be carried out is barred by time.

I have considered the contentions raised by learned counsel for the parties.

Admittedly, petitioner filed the suit on the basis of certified copy of the sale deed supplied to her by the office of Sub Registrar. Thereafter, defendants in their evidence produced the photocopy of the sale deed but with interpolations. Once the contents of the document produced by the defendants are contrary to the certified photocopy of the sale deed supplied by the office of Sub Registrar, petitioner-plaintiff has right to amend the plaint in order to mention the facts with regard to the sale deed produced by the defendants when it came to the knowledge of the petitioner.

In view of above, revision petition is allowed. Impugned order is set aside and the application moved by the petitioner-plaintiff for amendment of the plaint is allowed. The respondents will be at liberty to file written statement to the amended plaint.

(Paramjeet Singh Dhaliwal)
Judge

February 08, 2016
R.S.