

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

CR No.895 of 2016 (O&M)
Date of decision: 15.09.2017

JAGGA SINGH SINCE DECEASED THROUGH HIS LRS

...Petitioners

Versus

SHAMER CHAND AND ORS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. P.K. Ganga, Advocate
for the petitioners.

Mr. Ashok Kumar, Advocate
for respondent No.1.

REKHA MITTAL, J. (Oral)

Challenge in the present petition has been laid to order dated 23.12.2015 (Annexure P-4) passed by the Civil Judge (Jr. Div.), Sirsa whereby application (Annexure P-2) for amendment and correction of description of property in plaint and the judgment dated 03.03.2007, filed by the respondent/plaintiff has been allowed.

Counsel for the petitioners has submitted that in the plaint of civil suit for possession by specific performance of agreement to sell qua land measuring 15 kanals 11.5 marlas instituted by the respondent/plaintiff, land is described to be situated in Village Patli Dabar Tehsil and District Sirsa in the head note as well as prayer clause of the plaint. The suit was decreed vide judgment and decree dated 06.03.2007 passed by the trial

Court. The parties litigated upto Hon'ble the Supreme Court but the respondent/plaintiff never raised an issue that the land in question is situated at Village Narelhera and not at Village Patli Dabar. The application for amendment/correction was filed in the year 2015 but the same has been wrongly and illegally allowed by the Court below. It is argued with vehemence that the respondent/plaintiff not only sought correction of the judgment and decree with regard to name of the village in which the land was situated but he also sought amendment in the head note and prayer clause of the plaint. It is further argued that no such amendment can be allowed by the Court once the judgment and decree passed by the trial Court has merged into the judgment passed by the higher Courts.

Counsel representing the respondent/plaintiff has supported the impugned order with the submission that even after a judgment and decree passed by the Court has attained finality, there is no fetter on powers of the Court to allow amendment/correction of description of property in plaint and consequently in judgment and decree, within the ambit and purview of Sections 151 and 152 of the Code of Civil Procedure (for short 'the CPC'). Further argued that except in the head note and prayer clause, suit land was described to be situated in Village Narelhera, therefore, no prejudice shall be caused to the petitioner (since deceased) represented by his LRs with the necessary correction. According to counsel, the respondent/plaintiff cannot be denied the fruits of litigation that remained pending for more than a decade on mere technicalities sought to be pressed

into service by LRs of deceased defendant/JD. In support of his contentions, he has referred to judgment of Full Bench of this Court **Dayawanti Vs. Yadvindra Public School, 1996(1) RRR 111**. Further reference has been made to judgment of Hon'ble the Supreme Court **Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd and ors., 2007(4) RCR (Civil) 773** and by Single Bench of this Court **Surender Pal Singh Sethi Vs. State of Haryana, 2010(2) RCR (Civil) 556, Smt. Chand Kaur Vs. Paul Singh (deceased thr. LRs) and another, 2013 AIR CC 3225, Mohinder Singh and others Vs. Teja Singh and others, 1978 PLR 728, Bhagwan Dass Vs. Surjit Singh and others, 2014(4) Law Herald 3003, Vijay Vs. State of Punjab and others, 2015 (3) RCR (Civil) 725, Himmat Vs. Gram Panchayat Rozka Meo, 2016 (1) PLR 366.**

I have heard counsel for the parties, perused the paper book particularly various annexures appended with the petition.

Counsel for the petitioners, in response to a query by the Court, has fairly informed that Jagga Singh predecessor in interest of Maya Devi and another was not owner of land in Village Patali Dabar. He has also admitted that in the agreement to sell propounded by the respondent/plaintiff, basis of the suit for specific performance of contract dated 10.11.03, land in question is described to be situated at Village Narelhera and not at Village Patali Dabar. The parties contested the proceedings knowing it fully well that dispute pertains to land situated at

Village Narelhera, previously owned by Jagga Singh and agreed to be sold by said Jagga Singh in favour of Shamer Chand vide agreement dated 10.11.2003. The mere fact that in the head note and prayer clause of the plaint, land was mentioned to be situated at Village Patali Dabar in place of Narelhera is not sufficient to accept contention of the petitioners that the amendment/correction allowed by the Court below either does not fall within the purview and ambit of Sections 151 and 152 CPC or the impugned order suffers from patent error warranting intervention in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. As a matter of fact, the petitioners opposed the prayer for amendment/correction and filed the present petition with a clear intent to frustrate efforts of the successful decree holder to bear fruits of the decree passed way back in 2007 and affirmed upto the highest court.

For the foregoing reasons, the petition fails and is accordingly dismissed.

15.09.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No