

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

**Civil Revision No.8640 of 2017 (O&M)
Date of Order: 11.12.2017**

Santokh Singh

..Petitioner

Versus

Gurmeet Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Munish Jolly, Advocate,
for the petitioner.

ANIL KSHETARPAL, J (Oral)

Defendant no.1-petitioner is in revision petition against order dated 09.10.2017, allowing the plaintiff to amend the plaint by correcting a typographical mistake and also add an alternative relief of refund of the amount along with interest in a suit for specific performance of the agreement to sell.

Learned counsel for the petitioner-defendant no.1 has vehemently contended that in fact the mistake is not a typographical mistake and, therefore, when the case was at the final stage and the arguments have been concluded, the amendment could not be allowed.

I have heard learned counsel for the petitioner and with his able assistance gone through the documents filed in the paper book.

It is not in dispute that in paragraph 5 of the plaint, plaintiff had specifically pleaded that specific performance of the agreement to sell is to

be granted with regard to the entire land i.e. 73 killas, however, in the head note, the land mentioned was 40.6 acres. Plaintiff after realizing this typographical mistake, filed an application for amendment of the plaint. The learned Court had allowed such amendment after recording a finding that such mistake is only a typographical mistake.

Counsel for the petitioner has further submitted that the plaintiff is now prayed for alternative relief of refund, which has become time barred.

Learned trial Court after relying upon proviso to Section 21(5) of the Specific Relief Act, 1963, has held that such relief is only in alternative and is to be granted once the Court found that agreement to sell and payment of earnest money is proved, however, relief of specific performance of the agreement to sell cannot be granted. It may be further noticed that in paragraph 7 of the unamended plaint, plaintiff had pleaded as under:-

“That the plaintiff was and is still ready and willing to perform his part of contract. The plaintiff is entitled to the execution and registration of the sale deed in his favour on payment of balance sale price or in the alternative the plaintiff is entitled to recover the double amount of the sale price as agreed and along with damages, penalty and interest plus future interest @ 18% per annum.”

However, in the prayer clause, there was no prayer for alternative relief.

Taking into consideration the aforesaid facts, the learned trial

Court has exercised discretion and allowed an amendment.

In view of the aforesaid position, this Court does not find any good ground to interfere with the impugned order passed by the learned trial Court.

The revision petition is dismissed.

December 11, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No