

CR No.916 of 2017

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

Sr. No.123

CR No.916 of 2017

DECIDED ON: February 08, 2017

PARBHATI

..PETITIONER

VERSUS

REWATI DEVI

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside the judgment dated January 10, 2017 (Annexure P-3) passed by learned Civil Judge (Jr. Divn.), Rewari whereby an application filed by the petitioner/plaintiff for amendment of plaint under Order VI Rule 17 CPC read with Section 151 CPC has been dismissed.

2. Initially, the petitioner/plaintiff filed a suit for recovery of earnest money along with interest to the tune of ₹ 3 lacs with the averments that respondent-defendant entered into an agreement to sell dated January

28, 2009 in respect of house on receipt of ₹ 2,10,000/- as earnest money. However, at that time, the petitioner/plaintiff could not seek the relief for specific performance due to some bona fide inadvertence/over-sight. The suit was resisted by the respondent-defendant, the issues were framed arising out of the pleadings of the parties and then it was listed for the evidence of the petitioner/plaintiff. It was only thereafter, it came to the notice that the suit has been simply filed for the recovery of the amount and the relief for specific performance has not been sought. Accordingly, an application under Order VI Rule 17 CPC read with Section 151 CPC was moved with the following proposed amendment as under:-

- “1. In the title of the suit at the place of suit for recovery, suit for specific performance along with possession has to be written.*
- 2. At page No.4 in para No.6 last line, at the place of “that the earnest money alongwith interest has become Rs.3,00,000/-”, “it is necessary to be written “pass order directing defendant to get the sale deed registered in favour of plaintiff”.*
- 3. Similarly, at page No.4 para No.7 at the place of “the plaintiff requested defendant again and again to return an amount of Rs.3,00,000/- and take a receipt”. It is necessary to be written that “the plaintiff requested defendant many times to get the sale deed executed and registered in her favour.”*
- 4. At page No.5 para No.7 at the place of “suit for recovery of Rs.3,00,000/-”. It is required to be amended to “suit for possession by way of a specific performance.”*
- 5. At para No.9 at the place of “decree for recovery of*

Rs.3,00,000/-” “decree for specific performance along-with possession” has to be written.”

3. After hearing learned counsel for the petitioner and appraisal of the documents available on record, the trial court dismissed that application vide impugned order dated January 10, 2017. Feeling aggrieved, the petitioner/plaintiff has approached this court by way of instant petition.

4. The contention of learned counsel for the petitioner is that law pertaining to the amendment of the pleadings is liberal and it can be allowed at any stage of the proceedings. All the amendments which are necessary for the purpose to determine the real question controversy between the parties can also be allowed even at the appellate stage. In the case in hand, the suit for recovery is also based upon an agreement to sell dated January 28, 2009 executed by the defendant in favour of petitioner/plaintiff. However, at the time of filing the suit for recovery, the suit for specific performance could not be filed due to some bona fide, inadvertence or mistake on the part of his counsel. The respondent-defendant is also not going to suffer any irreparable loss, if the proposed amendment is allowed especially when the suit is still at its initial stage.

5. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner/plaintiff, but does not find to be of any legal weight. It would be appropriate to refer the relevant provisions provided under Order VI Rule 17 which reads as under:-

“The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the

purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

6. A glance at the aforementioned provision transpires that though the court may at any stage allow an amendment of pleadings to either party of the suit, yet the court has to see that proposed amendment should not cause any prejudice or inconvenience to the other party. The proviso makes it abundantly clear that no amendment should be allowed if the trial has commenced and only exception to it is that the concerned party could not carry out the proposed amendment after due diligence.

7. Adverting to the facts of the case in hand, by way of proposed amendment, the petitioner/plaintiff intends to convert the suit for recovery into that of specific performance. In the given circumstances, it cannot be said that either the agreement to sell or the contents thereof or the factum of ownership of the respondent-defendant was not in the knowledge of the petitioner/plaintiff at the time for filing of suit for recovery. The dispute with regard to the ownership of respondent-defendant was culminated much prior to the filing of the suit. The factum of ownership of the respondent-defendant was within the knowledge of the petitioner/plaintiff at the time of filing of suit for recovery. If the proposed amendment is allowed, the entire nature of the suit would stand changed which is not permissible under the

law. Thus, this court is of the considered view that there is no illegality or infirmity in the impugned order.

8. Thus, finding no merit in the instant petition, it stands dismissed.

February 08, 2017
Ankur

(JASPAL SINGH)
JUDGE

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