

110.

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

CIVIL REVISION-1757-2018

Date of decision:03.04.2018.

HARJINDER SINGH RATHOUR

... Petitioner

Versus

GURDEEP SINGH AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Prashant Bansal, Advocate,
for the petitioner.

HARI PAL VERMA, J. *(Oral)*

Petitioner has filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 08.12.2017 (Annexure P-7) passed by learned Civil Judge (Junior Division) Rajpura whereby the application filed by the petitioner-defendant No.2 under Order 6 Rule 17 CPC seeking amendment in the written statement in the pending suit, was declined.

Briefly stated, respondent-plaintiff, namely, Gurdeep Singh (since deceased) had filed a suit for specific performance of an agreement to sell dated 16.11.2011 in respect of suit land, as detailed in the plaint, situated within the revenue estate of Village Saidkheri, Tehsil Rajpura, District Patiala. As per the plaint, defendant No.2 (Harjinder Singh Rathour) was owner of the suit land and had appointed defendant No.1-Tirath Singh as his duly constituted attorney vide General Power of Attorney dated 17.06.2011. The said GPA was duly registered with the Sub-Registrar,

Rajpura. Accordingly, on the basis of GPA, defendant No.1 had entered into an agreement to sell with the respondent-plaintiff (Gurdeep Singh) on 16.11.2011. As per the agreement, the sale consideration was ₹2,10,000/- whereas the land agreed to be sold was 300 square yards.

Since the defendant did not execute the sale deed, respondent-plaintiff (Gurdeep Singh) had filed a suit for specific performance of an agreement to sell dated 16.11.2011. Defendant No.1-Tirath Singh opted not to appear in the case, whereas petitioner-defendant No.2 had filed his written statement taking various objections including maintainability, locus standi and no cause of action etc. Petitioner-defendant No.2 went to the extent of denying the very execution of agreement in favour of respondent-plaintiff. He has denied even the power to execute an agreement to sell or power to alienate the suit land. Defendant No.1-Tirath Singh was appointed by the petitioner-defendant No.2 only to look after/take care of the suit land as defendant No.2-Harjinder Singh Rathour was residing in the State of Odisha since his childhood.

After filing the written statement, petitioner-defendant No.2 moved an application under Order 6 Rule 17 CPC seeking amendment of the written statement. In the application, it has been pleaded that it has come to the notice of petitioner-defendant No.2 that vide agreement dated 07.07.2011, 100 square yards out of 300 square yards of land had been returned to defendant No.2 (petitioner) and, therefore, petitioner has become owner of 100 square yards of land and due to non-availability of said agreement dated 07.07.2011, the same could not be pleaded in the written statement. Therefore, necessity has arisen to make an amendment in the

returned the land measuring 100 square yards out of suit land of 300 square yards to defendant No.1-Tirath Singh vide agreement dated 07.07.2011. The said amendment was declined by the learned Civil Court.

Learned counsel for the petitioner has argued that it is on account of some inadvertent mistake, the factum of return of 100 square yards to defendant No.1-Tirath Singh could not be incorporated in the written statement and, therefore, the amendment is being sought at the initial stage and even otherwise the law as regards amendment to the pleadings under Order 6 Rule 17 CPC has to be considered liberally. He has relied upon a judgment of Hon'ble Supreme Court rendered in **Usha Balashaheb Swami and others Versus Kiran Appaso Swami and others-AIR 2007 SC 1663.**

I have heard learned counsel for the petitioner.

There is no dispute that an agreement to sell dated 16.11.2011 was entered between defendant No.1-Tirath Singh and respondent-plaintiff (Gurdeep Singh) regarding 300 square yards of land. Therefore, the very factum of return of 100 square yards was very much in the knowledge of the petitioner. The General Power of Attorney executed by Harjinder Singh Rathour in favour of Tirath Singh is a registered document wherein there is a recital of 300 square yards land, whereas the document which is the basis to get the written statement amended is an unregistered document merely on a judicial stamp paper. By making amendment in the written statement, petitioner intends to withdraw his earlier stand taken in the written statement to the disadvantage of the respondent-plaintiff. There is no dispute that Order 6 Rule 17 CPC empowers the court to allow amendment at any stage,

stipulates that in case trial has begun, amendment should not liberally be allowed. Therefore, by making amendment, petitioner intends to make out a different case which is not permissible under law. This Court does not find any infirmity in the impugned order passed by the trial Court.

Dismissed.

(HARI PAL VERMA)
JUDGE

03.04.2018
sanjeev

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