

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1982 of 2014 (O&M)
Date of Order:09.01.2018

Malhar Singh

..Petitioner

Versus

Maharaj Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vineet Chaudhary, Advocate,
for the petitioner.

Mr. Baldev Raj Mahajan, Sr. Advocate, with
Mr. Akhilesh Vyas, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral).

C.M.No.11934-CII-2017

Prayer in this application is to implead the legal representatives
of Malhar Singh, petitioner.

For the reasons mentioned in the application, which is
supported by an affidavit, application is allowed subject to all just
exceptions. The legal representatives detail whereof has been given in
paragraph 3 of the application are brought on record for the purpose of
prosecuting the present revision petition only.

C.R.No.1982 of 2014

Plaintiff-petitioner is in revision petition against the order dated
05.03.2014, dismissing the application for amendment of the plaint under
Order 6 Rule 17 CPC so as to correct the typographical mistake occurred

due to arithmetic calculations.

Plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 05.09.2005. It was pleaded in the plaint that the land measuring 14 kanals 13 marlas was agreed to be sold @ Rs.4,70,000/- per acre. It was further pleaded that Rs.6,72,500/- was paid as earnest money and, thereafter, an additional payment of Rs.1,77,500/- was also paid. Thus, the total payment, which has been made to the defendant comes to Rs.8,50,000/-. However, a mistake occurred in the calculation of the balance sale consideration payable.

Learned trial Court dismissed the application on the ground that the trial has started and is rather at the fag end particularly when arguments have already been addressed in the suit. The Court has further held that by amendment of the plaint at this stage plaintiff cannot be allowed to fill up the lacunas in the suit.

I have heard learned counsel for the parties at length and with their able assistance gone through the documents filed.

Learned counsel for the petitioner has submitted that the plaintiff while filing the plaint had correctly given the date of agreement to sell, the rate at which the land was agreed to be sold, earnest money paid and additional payment paid to the defendant. However, a arithmetic mistake occurred because of miscalculations of the balance sale consideration payable to the defendant.

On the other hand, learned senior counsel for the respondent has pointed out that the mistake has occurred not only in head note of the plaint but also in paragraphs 12 and 21 of the plaint. Learned senior counsel has further submitted that the parties have already lead their

evidence and trial has concluded. Learned senior counsel has submitted that even final arguments in the suit were addressed and judgment was reserved .

It is only thereafter that the present application was filed.

I have considered the submissions made by learned counsel for the parties.

It is not in dispute that the plaintiff had given correct particulars of the land, the rate at which the land was to be sold, date of agreement to sell, earnest money paid and additional payment which was paid subsequent to the agreement to sell. These facts have been clearly pleaded in the plaint. However, later on while calculating the balance amount, counsel or the plaintiff committed a mistake. It is a clear case of mistake due to mistake in the arithmetic calculation of the balance amount. Plaintiff has already filed a suit on the basis of the agreement to sell dated 05.09.2005.

In the considered opinion of this Court, the mistake was only a arithmetical mistake which ought to have been permitted to be corrected in the facts and circumstances of the present case. Such mistakes can be permitted to be corrected after the judgment has been pronounced under Sections 151, 152 & 153 of the Code of Civil Procedure.

The impugned order passed by the learned Additional Civil Judge (Sr. Division), Naraingarh, dated 05.03.2014 is set aside.

The defendant shall get an opportunity to lead evidence in rebuttal in view of the amendment made.

Since the suit has been pending for almost 10 years, the trial Court is requested to decide the case finally within a period of three months from the date of receipt of the certified copy of this order.

An application for amendment shall stand allowed subject to payment of costs of Rs.10,000/- to the defendant.

The revision petition is allowed.

January 09, 2018
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(ANIL KSHETARPAL)
JUDGE

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