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

CR-1891-2017 (O&M)

Date of decision : 27.11.2018

Kuldeep Kaur

... Petitioner

Versus

Darshan Singh (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.P. Soi, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for respondent No.1.

AMIT RAWAL, J.

The present revision petition is directed at the instance of the petitioner-plaintiff assailing the order dated 03.03.2013, whereby the application for amendment of the plaint has been rejected.

The plaintiff instituted the suit claiming specific performance of agreement to sell dated 20.08.2001 in respect of land measuring 9 kanals 0 marla. The aforementioned suit was decreed vide judgment and decree dated 19.01.2011, but the lower Appellate Court vide order dated 20.02.2013 remitted the matter with a direction to implead Joginder Singh and Darshan Singh as defendants. Legal representatives of Darshan Singh on account of his death, had already been impleaded as party, but alleged that during the interregnum, acquired the knowledge that the sale deed dated 09.08.2004 and 10.05.2006 were executed by Bhagat Singh, the vendor, to Joginder Singh, who further alienated to Darshan Singh. The sale deeds

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were during the existence of the agreement to sell, but the trial Court erroneously declined the application on the ground that it tantamounts to adoption of delaying tactics. A registered document is required to be challenged under Section 9 of the Code of Civil Procedure and particularly when the lower Appellate Court remanded the matter by affording the opportunity to parties to lead evidence.

Per contra, learned counsel for the respondents-defendants supported the order, under challenge, as the amendment changed the nature of the entire suit and was not in tandem with the judgment and decree dated 20.02.2013. The remand order was confined only to impleadment of Joginder Singh and Darshan Singh and under garb, the plaintiff cannot be permitted to seek amendment.

I have heard learned counsel for the parties, appraised the paper book and of the view that the order, under challenge, is not sustainable, for, the suit for specific performance was filed in the year 2005. One of the sale deeds, of 2004 is prior to the suit, but during the subsistence of the agreement to sell dated 20.08.2001. The other one was during the pendency of the suit. No doubt the lower Appellate Court remitted the matter for impleadment of Joginder Singh and Darshan Singh, but in the absence of challenge of sale deed in their favour by simpliciter impleadment would be meaningless. The amendment, in my view, would help the Court in adjudication of the *lis* seeking specific performance of the agreement to sell. The technicality should not come in the way of the parties, rather would assist the trial Court for effective decision. The amendment, in my view, does not change the nature of the case as it is extension of the relief already sought.

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Keeping in view the aforementioned facts, the impugned order is set aside and the application seeking amendment is allowed subject to the payment of costs of ₹5,000/-.

Resultantly, the present revision petition is allowed.

27.11.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**