

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

C.R.No.432 of 2016 (O&M)

Date of Decision: May 30, 2018

Vinod Gupta & another

...Petitioners

Versus

Parveen Kumar & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Davinder Lubana, Advocate,
for the petitioners.

None for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner-counter claimants are aggrieved of the impugned order dated 12.1.2016 (Annexure P-1), whereby the application for amendment in the prayer clause of the counter claim, has been declined.

Mr.Davinder Lubana, learned counsel for the petitioners submitted that respondent-plaintiff Parveen Kumar instituted the suit for permanent injunction restraining the petitioners, defendants therein, and their agents for causing interference into peaceful possession of House No.1670, New Indira Colony, Manimajra, Chandigarh and also forcible dispossession.

In the aforementioned suit, petitioner-defendants set up a claim that the respondent-plaintiff had entered into an agreement to sell in the month of July, 2009 regarding the house aforementioned with petitioner No.2-defendant No.2 and the last date for execution of the documents was

26.10.2009, but since the plaintiff was in need of money, he executed a General Power of Attorney dated 21.10.2009, Will and affidavit of even date, much less received full and final payment on the date of execution of the agreement to sell. However, due to inadvertence, the prayer of specific performance in the prayer clause could not be incorporated as it was missed out and, thus, prayer in the following manner was sought to be incorporated:-

“And decree for specific performance of the agreement to sell dated 21.10.2009 and be passed in favour of the defendant No.1 and against the plaintiff.”

The Court had committed illegality and perversity in dismissing the application and no prejudice would be caused to the respondent-plaintiff. Evidence had already been brought on record. The Court had not appreciated the difference between the plaint and the counter claim.

This Court, on 29.3.2016, had issued notice of motion. There is no representation on behalf of the respondents despite service. Accordingly, I proceed to decide the revision petition.

I have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Lubana, for, the petitioner had undertaken not to lead any evidence except relying upon the evidence already led by the parties. There is no hard and fast rule that the counter claim cannot be amended as it had a trappings of the independent suit, thus, the findings of the trial Court, while rejecting the application for amendment of the counter claim, are wholly fallacious.

The amendment sought will not change the nature of the suit, for, all the ingredients of the specific performance have been incorporated

except the prayer clause. Moreover, respondent-plaintiff would have a right to rebut the same by way of written statement.

As an upshot of aforementioned findings, the order under challenge is set-aside. Amendment sought to be incorporated in the counter claim by adding the prayer clause relied upon is permitted. Revision petition stands allowed.

May 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No