

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

CR No.5015 of 2015
Date of decision : 04.04.2018

Sushil Kumar Jain

...Petitioner

Versus

Sudesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rishabh Gupta, Advocate for the petitioner.

Mr. Naveen Chopra, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

The defendant-petitioner is in the revision petition against the order passed by the learned trial Court allowing the application for amendment of the plaint vide order dated 28.05.2015.

Learned counsel for the petitioner has vehemently argued that the order is wrong as the previous application filed by the plaintiff was dismissed by the Court on 02.02.2015. He has also submitted that the amendment would change the nature of the suit which is not permissible. He has also submitted that the issues have been framed and the case is fixed for the evidence and, therefore, the trial has started.

In the present case, the plaintiff originally filed a suit for declaration claiming that he is owner of the property pursuant to the agreement to sell, the General Power of Attorney, the Will-a testamentary

document etc. During the pendency of the suit, he filed an application so as to add the relief of specific performance of the agreement to sell. The Court finding that the relief of declaration and specific performance are contradictory, dismissed the application only on the ground that if the present application is allowed, it give rise to the contradictory plea. Hence, the plaintiff filed a fresh application.

In the considered opinion of this Court, the application for amendment of the plaint was not dismissed on merits. It was dismissed only on the ground that if the amendment of the plaint is allowed, it will give rise to the contradictory plea. In the fresh application, the plaintiff prayed that he may be allowed to omit the relief of declaration and seeks specific performance of the agreement to sell which has been allowed by the Court. Hence, order in first application would not come in the way of the petitioner.

Second argument of the learned counsel is that the nature of the suit is being changed. In the present case, the plaintiff has already pleaded his rights on the basis of the agreement to sell. However, by mistake, he did not pray for the specific performance of the agreement to sell. The basic suit continues to be the same. Only relief sought in the suit has been changed so as to bring the plaint in consonance with the law.

In the considered opinion of this Court, such relief sought by way of amendment does not amount to changing the nature of the suit.

Next argument of the learned counsel is that the issues have been framed and the case is fixed for evidence. Learned counsel was requested to inform that whether any evidence has been recorded or not, the

answer to this question was that he does not know the status. Be that as it may. In the present case, the agreement to sell set up by the plaintiff in his favour is being disputed by the defendants. The agreement to sell records full payment of the sale consideration, as was prevalent before the judgment passed by Hon'ble the Supreme Court reported as *AIR 2012 SC 206, Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another.*

The plaintiff is now only wanting to add and seek the specific performance of the agreement to sell. The Court has allowed the amendment and the recording of evidence is yet to start or it has just started.

In view thereof, there is no scope for interference.

Revision petition is dismissed.

04.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No