

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

CR No.5293 of 2016 (O&M)
Date of decision : 29.01.2018

Jodh Singh

...Petitioner

Versus

Pearl Colonizer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ishwar Lal, Advocate for the petitioner.

Mr. Munish Jhanji, Advocate for
Mr. Gitish Bhardwaj, Advocate for respondent No.2.

Mr. Bhupinder Singh, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is in the revision petition against the order dismissing the application filed under Order 6 Rule 17 CPC declining the prayer for amendment of the plaint.

The plaintiff wants to correct the date of the agreement i.e. from 23.05.2011 to 24.05.2011 and has also prayed for rectification of the agreement to sell in question by substituting the date as 24.05.2011 in place of 23.05.2011.

It is the case of the plaintiff that stamp papers for execution of the agreement were purchased on 24.05.2011. However, due to typographical mistake, at the end of the agreement, the date was mentioned

as 23.05.2011. It is further the case of the petitioner-plaintiff that the target date for execution and registration of the sale deed was extended on two occasions.

It is further the case of the petitioner that due to typographical error in the agreement to sell, the mistake was carried in the pleadings as well as the affidavit filed by the parties.

Learned trial Court has dismissed the application on the ground that the application filed by the petitioner is belated and it has been filed after the commencement of the trial. The Court has also recorded prima facie finding that such mistake is not possible in the facts and circumstances of the case.

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

The photocopy of the agreement to sell has been produced before me. As per the endorsement by the Stamp Vendor, the stamp papers were purchased on 24.05.2011. The agreement to sell is written on ₹300/- non-judicial stamp paper. However, at the end of the agreement, the date of the execution has been mentioned as 23.05.2011. Obviously, there is either a mutual mistake between the parties or there is manipulation in the agreement. However, this is not the stage for returning any such finding. The present case is only at the stage of consideration on the application seeking amendment of the plaint.

Section 26 of the Specific Relief Act, 1963 enables the Court to order the rectification of the instrument, if such mistake is because of fraud or mutual mistake of the parties. The prayer made by the petitioner-plaintiff

is also for rectification of the instrument. Ultimately after leading the evidence, the Court would arrive at a final conclusion whether the mistake was on account of fraud or mutual mistake or otherwise. However, at this stage when prima facie there appears to be a case of mutual mistake while putting the date for entering into the agreement as 23.05.2011 which is even prior to the date when the stamp papers were purchased, this Court cannot shut the doors of the plaintiff.

In view thereof, the impugned order is set aside. Revision petition is allowed.

The application for the amendment of the plaint shall stands allowed, subject to the payment of costs of ₹5,000/- to the opposite party.

29.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No