

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

CR No.7280 of 2016 (O&M)

Date of decision : February 20, 2018

Walaiti Singh

..... Petitioner

Versus

Shri Surinder Singh and another

..... Respondens

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Munish Gupta, Advocate for the petitioner.

Mr. S.S. Majithia, Advocate for respondent No.1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 31.08.2016 (Annexure P-7), passed by learned Addl. District Judge, Amritsar, whereby the amendment of the plaint at appellate stage was allowed to the effect that the date of the agreement of sale was allowed to be corrected from 16.01.2009 to 16.06.2009.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the petitioner-defendant No.1 has pleaded that as per proviso of Order VI, Rule 17 CPC, 1908, no application for amendment shall be allowed after the trial has commenced, unless the Court come to the conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial.

A perusal of the file shows that the plaintiff-respondent No.1 had filed a suit for specific performance, claiming agreement of sale dated 16.01.2009.

I have seen photocopy of the agreement (Ex.P-1), which also contains certain acknowledgment regarding payment of money on subsequent dates. The agreement is hand written. The date of the agreement is written in hand as 16.01.2009. The sale deed was to be executed till 15.12.2009. The sale consideration was of ₹11,00,000/- out of which ₹1,50,000/- were paid at the time of agreement and the balance was to be paid at the time of sale. However, the subsequent endorsement on the back of the page No.1 (Ex.P-2) shows that on 19.06.2009, another sum of ₹1,00,000/- was paid. Subsequently, on 27.10.2009, another sum of ₹1,00,000/- was paid. Thereafter, vide subsequent writing dated 17.12.2009, ₹50,000/- were paid. Then, on 17.06.2010, ₹1,00,000/- were paid, which goes to show that payments were regularly made. The trial court has taken the view that the stamp paper was purchased on 15.06.2009. Therefore, the agreement could not be executed on 16.01.2009. According to the plaintiff-respondent No.1, since the agreement was hand written, therefore, the error in the date has occurred. The trial Court has further taken the view that as per another writing (Ex. P-7), it was agreed between the parties that the date of agreement has been incorrectly written and be read as 16.06.2009. The writing appears the signatures of both the parties.

Learned counsel for the petitioner-defendant No.1 has contended that the said writing Ex.P-7 is not proved before the trial court, in accordance with law.

It is claimed that the said writing in the shape of note, below another writing on 08.09.2011, which indicates the total sum paid on the said date and then sale deed was agreed to be executed after three months.

I am of the view that at this stage, evidentiary value of the said document (Ex. P-7) is not be seen. The overall documents show that after the agreement, several payments were made. It is a question of fact to be proved before the trial court as to whether there was any error in writing the date and whether the same was corrected by way of another writing? The amendment from its face is clerical in nature. Even if, there is a delay, such correction of date is necessary for deciding the real controversy between the parties, keeping in view that the payment of ₹8,50,000/- has already been made by the plaintiff-respondent No.1 to the defendant No.1-petitioner. Therefore, there is no illegality or infirmity in the impugned order.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

February 20, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No