

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

107

CR No.8298 of 2015 (O & M)
Date of Decision:21.03.2018

Charan Singh

...Petitioner

Versus

Hazara Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Padam Jain, Advocate
for the petitioner.

None for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-petitioner is in the revision petition against the order dated 02.11.2015 declining the application under Order 6 Rule 17 of the Code of Civil Procedure to amend the plaint.

Plaintiff has sought amendment with a view to include the relief of rectification of the khasra numbers in the agreement to sell. Learned trial Court has dismissed the application on two grounds i.e. (i) the correction of khasra number is not permitted under law; (ii) it would amount to de novo trial.

Learned counsel for the petitioner has pointed out that the learned trial Court has overlooked the provision made to this effect in Section 26 of the Specific Relief Act, 1963. He has submitted that if an instrument, specific performance whereof is being prayed for, suffers from any error either due to fraud or mutual mistake, the Court has power to rectify the aforesaid instrument. Hence, he submits that the learned trial Court has committed illegality in overlooking the provisions of Section 26

of the Specific Relief Act, 1963. He has further submitted that the plaintiff is not required to lead evidence except tendering a copy of jamabandi.

This Court has considered the submissions. It would be useful to extract Section 26 of the Specific Relief Act, 1963:-

“26. When instrument may be rectified-(1)

When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956), applies] does not express their real intention, then-

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

(2) If, any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that

intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

(3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

(4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed:

Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to attend the pleading on such terms as may be just for including such claim.”

A reading of the aforesaid provision clearly shows that the Court has the power to rectify a contract or other instrument if the Court finds that the instrument through fraud or mistake does not express the real intention of the parties. The observation of the Court that prayer for correction of the khasra number cannot be permitted under law, is erroneous.

Learned counsel for the petitioner has fairly submitted that the plaintiff does not lead any opportunity to lead oral evidence. He only wants to tender a copy of jamabandi, which is per se admissible.

In view of the aforesaid discussion, the order under challenge is set aside.

Revision petition is allowed.

Plaintiff/petitioner is permitted to amend the plaint. The suit is already at the stage of the defendant's evidence, who would be at liberty to complete their evidence.

21.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No