

CR No. 8351 of 2016(O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8351 of 2016(O&M)
Date of decision : May 24, 2018

Suman Kumar

..... Petitioner

Versus

M/s Vipul Infrastructure and others

..... Respondents

CR No. 8358 of 2016(O&M)

Suman Kumar

..... Petitioner

Versus

M/s Vipul Infrastructure and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A. K. Jain, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate
for the respondents.

AMIT RAWAL, J (oral).

The present revision petition is directed against the impugned order dated 1.11.2016 (Annexure P-1) whereby the application submitted by the petitioner-plaintiff seeking amendment of the plaint incorporating para 12-A at the evidence stage in the suit has been declined.

Learned counsel appearing on behalf of the petitioner submitted that civil suit dated 26.7.2012 (Annexure P-3) was filed by the petitioner i.e. sons of Tahar Singh challenging the Collaboration Agreement dated 2.5.2005 allegedly entered into by the father Tahar Singh in respect of land measuring 1 Kanal 17 Marlas not binding upon the rights of the plaintiff. The aforesaid Collaboration Agreement envisage that in

land i.e. father of the plaintiffs would get 50 sq.yards of the plotted area. Litigation with the other brother for the purpose of property was pending before the revenue court.

During the pendency of the suit, M/s Vipul Infrastructure moved an application placing on record the Collaboration Agreement dated 2.5.2005 pertaining different terms that instead of allotment of 50 sq.yards to be 350 sq.yards. It is in that background that the application for amendment of the plaint was filed but the court below has erroneously rejected the same.

Per contra, learned counsel appearing on behalf of the respondents submitted that the petitioner-plaintiff had not come to the court with clean hands, for, in the written statement filed in the aforementioned suit it has been categorically stated that Tahar Singh had executed an agreement to sell in respect of the suit property after having been obtained the earnest money. The defendant had already availed the remedy seeking specific performance of the agreement to sell, therefore collaboration agreement become unconstitutional. Rightly so, the trial court declined the application, thus urges this court for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions made by learned counsel for the petitioner, for, the amendment sought to be incorporated by adding the following paragraph which reads thus:-

“12-A That the plaintiffs of the present suit have filed an application for partition of the suit land titled 'Ravinder Vs. Raj Pal' and others before the Naib Tehsildar, Gurgaon, which is still pending. That the defendant

Company had filed an application dated 29.2.2012 in the said partition proceedings allegedly for the dismissal of the partition case. That along with the said application it has relied upon a Collaboration Agreement executed between M/s Vipul Infrastructure and the owner of the suit land Sh. Tahar Singh and has produced a copy of the said Collaboration Agreement on the file. That copy of the application dated 29.2.2012 is Annexure A and the alleged Collaboration Agreement dated 2.5.2005 has already been exhibited in this suit as Ex. P1. That a perusal of the Ex. P1 has shown that the defendant company had promised to develop a residential colony upon the suit land and as consideration had agreed to allot a plotted area (measuring 350 square yards in its colony to Sh. Tahar Singh). That this Collaboration agreement is at variance with the Collaboration Agreement given to Sh. Tahar Singh and relied upon by the Defendant Company in the present suit which recites that a plot measuring 50 square yards would be allotted to Sh. Tahar Singh under it. That it appears that the Company has played a fraud upon Tahar Singh by first executing an agreement promising to allot him 350 sq.yards but later on fabricated the agreement by deleting 350 sq. yards and replacing it with 50 square yards without the knowledge or consent of Sh. Tahar Singh. That the plaintiffs have acquired knowledge of the above facts only recently by happening to thoroughly read the Collaboration Agreement Ex. P.1 ”

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That it may also be declared that the defendant had fabricated the Collaboration Agreement dated 2.5.2005 by deleting 350 sq.yards from it and substituting it with 50 square yards.

12-B That the defendant M/s Vipul Infrastructure executed Collaboration Agreement of area measuring 3

Kanals 15 Marlas out of the same khewat as the suit land and dated 2.5.2005 in favour of Lal Singh, Rajesh Kumar and Raj Pal, in which the defendant agreed to allot plot measuring 650 square yards in their favour. That compared with the terms of this Collaboration Agreement, the Collaboration Agreement set up by the defendant in the present suit is bogus, fraudulent, unreasonable and which infact no prudent person would enter into.”

On reading of the aforementioned paragraph it is seen that it is simple and clarificatory in nature. Defendants had already availed the remedy seeking specific performance of the agreement to sell as the court had to decide the issue with regard to challenge of the Collaboration Agreement to be declared null and void or not. The court, unmindful of the fact that application was filed at the stage when the suit was slated for plaintiff's evidence as the other party has right to cross-examine the witnesses as well as contents of the documents, rejected the application.

Keeping in view the aforementioned facts, the impugned order is not sustainable and is hereby set aside. The application for amendment of the suit is allowed.

Accordingly the revision petition stands allowed with costs of ₹5,000/-.

(AMIT RAWAL)
JUDGE

May 24, 2018
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No