

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

115

**CR No.9564 of 2018 (O&M)
Date of Decision:19.12.2018**

Shiv Nandan Kumar Vinayak

....Petitioner

Versus

Kulwant Kaur and another

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. A.D.S. Jattana, Advocate for the petitioner.

B.S.WALIA, J (Oral)

[1] Revision petition has been filed under Article 227 of the Constitution of India, seeking setting aside of order (Annexure P-8) dated 13.10.2018, passed by the learned Civil Judge (Junior Division), Khanna in Civil Suit No.149 of 27.03.2008 in case titled as '*Shiv Nandan Kumar versus Kulwant Kaur and another*' and for allowing the application for amendment (Annexure P-6), so as to enable the petitioner-plaintiff to amend the civil suit (Annexure P-1) dated 26.03.2008.

[2] Brief facts of the case, leading to the filing of the revision petition are that the petitioner-plaintiff filed a civil suit for specific performance of agreement to sell dated 07.08.2006, executed by respondent-defendant No.1 in favour of the petitioner-plaintiff and for directing defendant No.2 to join respondent-defendant No.1 in execution and registration of the sale deed in favour of the petitioner-plaintiff and in the alternative for a declaration that the sale deed dated 24.08.2007, executed by respondent-defendant No.1 in favour

of respondent-defendant No.2 in respect of the same piece of land was illegal, null & void, ineffective and inoperative *qua* the rights of the petitioner-plaintiff, therefore liable to be set aside etc.

[3] In the year 2018, an application was filed by the petitioner-plaintiff under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint on the ground that during the pendency of the suit filed by the petitioner-plaintiff, respondent-defendant No.1 in connivance with respondent-defendant No.2 filed Civil Suit No.475 of 11.11.2009, titled as '*Kulwant Kaur versus Arvinder Singh*' without impleading the petitioner-plaintiff as party in said suit and got judgment and decree dated 14.05.2015 whereby the civil suit was dismissed by observing that respondent No.1-defendant No.1 had failed to prove that the sale deed in favour of respondent-defendant No.2 was a *sham* transaction and that the same had necessitated the petitioner-plaintiff for seeking amendment of the plaint for a declaration that judgment and decree dated 14.05.2015 passed in *Civil Suit No.475 of 1111 of 2009* in case titled as '*Kulwant Kaur versus Arvinder Singh*' by the Court of **Shri Harjinder Singh**, Civil Judge (Junior Division), Khanna, was illegal, null & void, ineffective, inoperative and not binding on the petitioner-plaintiff and was therefore liable to be set aside, that the judgment and decree dated 14.05.2015 had been obtained by respondent-defendant No.1 in collusion with respondent-defendant No.2 without impleading the petitioner-plaintiff as party in the civil suit in order to forestall the legal claim of the petitioner-plaintiff *qua* the property in dispute, that the proposed amendments were essential to determine the real question in controversy etc.

4. The application under Order 6 Rule 17 read with Section 151 CPC was dismissed by the learned Civil Judge (Junior Division), Khanna on the ground of want of due diligence since the judgment and decree dated 14.05.2015 between respondent-defendant No.1 and respondent-defendant No.2 was to the knowledge of PW-1 i.e. the petitioner-plaintiff in the cross-examination conducted on 27.09.2016 (wrongly recorded as 2013) whereas the application for amendment had been filed in the year 2018 and secondly that no finding had been given by the learned Civil Judge in judgment dated 14.05.2015, i.e. Ex. D-29, as to the alleged agreement to sell in favour of the petitioner-plaintiff on the basis of which the present suit had been filed.

[5] Learned counsel contended that the impugned order was legally unsustainable as the amendment prayed for was necessary for the just decision of the case and the application for amendment could not have been dismissed on the ground of want of due diligence.

[6] I have considered the submissions of learned counsel for the petitioner. No doubt, amendment cannot be declined solely on the ground of want of exercise of due diligence provided that the amendment prayed for is necessary for determining the real question in controversy amongst the parties.

[7] In the instant case, the petitioner-plaintiff had filed a civil suit for specific performance of agreement to sell dated 07.10.2006, executed by respondent-defendant No.1 in his favour and in the alternative had sought a declaration that sale deed dated 24.08.2007 executed by respondent-defendant No.1 in favour of respondent-defendant No.2 in respect of the same piece of land was illegal, null & void, ineffective and inoperative *qua* the rights of the petitioner-plaintiff therefore liable to be set aside. No finding has been given in

Civil Suit No.475 of 11.11.2009, decided on 14.05.2015, with regard to the alleged agreement to sell dated 07.10.2006, executed by respondent-defendant No.1 in favour of the petitioner-plaintiff on the basis of which the instant suit has been filed. The suit filed by respondent-defendant No.1 against respondent-defendant No.2 has also not given a finding in respect of the alternative prayer made by the petitioner-plaintiff for a declaration that the sale deed dated 24.08.2007, executed by respondent-defendant No.1 in favour of respondent-defendant No.2 in respect of the same piece of land is illegal, null & void, ineffective and inoperative *qua* the rights of the plaintiff.

[8] The petitioner-plaintiff has to prove of having entered into an agreement to sell prior in time with respondent-defendant No.1 than the agreement/sale deed between respondent-defendant No.1 and respondent-defendant No.2 and of his being ready and willing to perform his part of the contract, therefore his having a prior claim to get the sale deed executed in his favour.

[9] On the other hand, respondent-defendant No.2 can defend the subsequent sale deed executed by respondent-defendant No.1 in his favour only in the eventuality of making out a case of being a *bona fide* purchaser for valuable consideration without knowledge of the prior agreement between the petitioner-plaintiff and respondent-defendant No.1. Reference in this context is made to the decision of Hon'ble the Supreme Court in case titled as '**Zorawar Singh versus Sarwan Singh (dead) by LRs**', 2002(4) SCC 460. Both aspects are to be decided in the instant case. Accordingly, by no stretch of imagination, it can be said that the application for amendment so as to incorporate a challenge to judgment and decree dated 14.05.2015 passed in Civil Suit No.475

of 11.11.2009 is essential for the determination of the question in controversy between the parties. Accordingly, the application for amendment and consequently the revision petition is bereft of merit in view of decision of Hon'ble the Supreme Court in '**Vidhya Bai and another** versus **Padam Lata and another**', 2009(1) SCC Civil 563 for it is only where the amendment is necessary to decide the real dispute between the parties that the amendment is to be allowed. However such is not the position in the instant case.

[10] Accordingly, I find no ground whatsoever to interfere with the well reasoned order passed by the learned Civil Judge (Junior Division), Khanna, dismissing the application under Order 6 Rule 17 CPC. Accordingly, the revision petition is **dismissed** *in limine*.

(B.S.WALIA)
JUDGE

December 19, 2018
rajneesh

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No