

CR-4290-2018 (O&M)

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

CR-4290-2018 (O&M)

Date of decision : 21.05.2019

Prem Kumar (deceased) through LRs

... Petitioner(s)

Versus

Roshan Lal and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.P.S. Kohli, Advocate
for the petitioner(s).

Mr. Naveen S. Bhardwaj, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the respondents-plaintiffs seeking amendment in the prayer clause and headnote of the plaint, has been allowed.

Mr. Kohli, learned counsel appearing on behalf of the petitioner(s)-defendant(s) submitted that the respondents-plaintiffs in the year 2011, instituted the suit for specific performance of agreements to sell dated 13.04.2007, 10.01.2008 and 05.02.2010. When the case was listed for defendants' evidence, the plaintiffs submitted an application (Annexure P-1) under Order 6 Rule 17 of the Code of Civil Procedure, for amendment by omitting two agreements to sell dated 13.04.2007 and 10.01.2018 and

retaining as 05.02.2010, which is not permissible in law as it is not in consonance with the amended provisions of Order 6 Rule 17 of CPC. There is no exercise of 'Due Diligence' and it cannot be, even, considered to be an inadvertence or typographical error. A valuable right has accrued in favour of the petitioners-defendants and cannot be taken away at the convenience of the respondents-plaintiffs.

Mr. Naveen S. Bhardwaj, learned counsel appearing on behalf of the respondent Nos.1 and 2/plaintiffs submitted that amendment is to prevent from any objection being taken qua limitation as agreement to sell dated 05.02.2010, is in continuation of the previous agreements and no prejudice would be caused, rather it is a gamble, which is not going to affect the other side. No fresh evidence is required to be led as the evidence, in this regard, has already been led, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Kohil, for, particularly when Mr. Bhardwaj, suffered a statement that in terms of the proposed amendment allowed by the trial Court, no fresh evidence is required to be led as evidence, in this regard, has already been led. The suit is always based upon the preponderance of the evidence and the trial Court shall look into the claim at the final stage, after considering the arguments, oral and documentary brought on record. In my view, it is an inadvertence or typographical error, therefore, expression of exercise of Due Diligence would not come in the way.

Keeping in view the aforementioned facts, the impugned order,

under challenge, cannot be said to be fallacious and perverse, much less, without jurisdiction. No ground is made out for interference. Resultantly, the present revision petition is dismissed.

21.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**