

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CR No.5536 of 2016

Tejbir & Anr.

....Petitioners

Versus

Vinod Kumar & Anr.

....Respondents

Date of Order: 17.1.2019

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Johan Kumar, Advocate for the petitioners.

Mr. Adarsh Jain, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Present revision petition is directed against the impugned order dated 20.07.2016 whereby the application filed by the petitioners for amendment of written statement has been dismissed.

Respondent-plaintiffs instituted the suit for recovery of Rs.12,00,000/- on the premise that the petitioners-defendants had entered into an agreement to sell dated 25.07.2011 and received earnest money of Rs.12,00,000/- out of total sale consideration of Rs.52,25,000/-. Stipulated date for registration of sale deed was fixed as 12.10.2011. Thereafter, the plaintiffs came to know that the defendants had executed another agreement to sell in favour of third person on 13.6.2011, which was explained in para Nos.10,11,12 & 13 of the plaint. While filing written statement, the petitioners-defendants in para 9 denied the execution of the agreement to sell dated 13.6.2011 stating as under:

“Para no.9 of the plaint is wrong and not admitted. It

is wrong to allege that the defendants executed the other agreement to sell of the suit land in favour of other person on 13.6.2011 as alleged.”

When the case was fixed for defendants' evidence after fourth adjournment being afforded despite the fact that the plaintiffs had examined Inder Singh, party to the said agreement to sell dated 13.6.2011, petitioners submitted an application alleging that the agreement was cancelled and amended para 9 to the following effect:

“Para no.9 of the plaint is wrong and not admitted. It is wrong to allege that there is any other agreement in favour of other person. On the contrary it is submitted that the defendants executed an agreement of sale in favour of one Inder son of Tunda, resident of village Selothi and the date for execution and registration of the sale deed was fixed as 12.10.2011 but on 25.7.2011 the said agreement to sell was cancelled in the presence of the plaintiffs and the attesting witnesses of the said agreement to sell and the original agreement to sell was handed over to the defendants by the said Inder after making endorsement of cancellation over the same in the presence of witnesses. The original cancelled agreement to sell has already been placed on the file and as such the plaintiffs were very much in the knowledge and notice of the same.”

Learned counsel for the petitioners submitted that the parameters for amendment of the plaint and that of written statement are totally different. The amendment sought to be incorporated in the written statement is very much relevant for the proper decision of the case and the Court has to be more liberal in allowing material amendments. In support of his contentions, he relied upon a judgment of Hon'ble Supreme Court

reported as **Usha Balashaheb Swami & Ors vs. Kiran Appaso Swami &**

Ors 2007(2) RCR (Civil) 830.

Per contra, learned counsel for the respondents submitted that Inder Singh was examined, who deposed in favour of the plaintiffs with regard to the averments qua recovery of amount as the agreement to sell had become unexecutable in view of another agreement dated 13.6.2011. It was submitted that in order to thwart the claim regarding maintainability of the suit, four opportunities were availed by the petitioners and amendment sought to be incorporated tantamounts to withdrawal of the admission and thus prayed for dismissal of the revision petition with exemplary costs.

After hearing learned counsel for the parties and appraising the paper book, I find no force and merit in the submissions of learned counsel for the petitioners. From the perusal of said agreement to sell purported to have been cancelled, it is evident that there are no signatures or acknowledgement regarding cancellation of the agreement. When confronted with the date of cancellation, learned counsel for the petitioners on instructions from his clients submitted that cancellation was done on the same day.

Paragraph 20 of the cited judgment cannot be read in isolation as the facts of that case reveal that the amendment sought to be incorporated did not amount to withdrawal of the admission but denial to the title of the plaintiff and defendant Nos.2 to 8. The law can always be construed with the facts of each case but not in a blanket manner. On juxtaposition of the unamended stand viz-a-viz the stand taken herein, the petitioners have attempted to withdraw admission, which is an attempt to thwart the claim of the respondents-plaintiffs while amending the written statement.

Resultantly, the impugned order rejecting the prayer of the petitioners cannot be said to be suffering from any illegality or infirmity.

Dismissed.

January 17, 2019
manoj

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No