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

CR-7308-2017 (O&M)

Date of decision : 14.01.2019

Harbhajan Singh

... Petitioner

Versus

Nirmal Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. L.S. Mann, Advocate
for the petitioner.

Mr. G.S. Nagra, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition at the instance of the petitioner-defendant No.1 is directed against the impugned order, whereby at the stage of the plaintiff's evidence, an application for amendment by incorporating para No.3A and 3B in the written statement, has been dismissed.

Learned counsel appearing on behalf of the petitioner-defendant No.1 submitted that the plaintiff/respondent No.1 instituted the suit for specific performance of agreement to sell dated 08.10.2015, wherein, the petitioner-defendant filed the written statement, but failed to incorporate the para Nos.3A and 3(B) in the written statement. The said amendment is essential and necessary as the suit, after closure of the evidence of the plaintiff, is slated for defendants' evidence. The plaintiff can always cross-examine the defendant on this point.

Learned counsel for the respondent No.1-plaintiff opposed the

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aforementioned prayer by supporting the impugned order and submitted that the amendment sought to be incorporated is neither germane to the decision of the suit nor essential and necessary as it is an attempt to delay the adjudication of the suit, thus, urges this Court for dismissal of the present 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 of Mr. Mann.

It would be apt to extract the amendment by incorporating the para Nos.3A and 3B, in the written statement, which reads as under:

'Para 3A That specific performance of alleged agreement to sell is not permissible under law due to the reason that in the revenue record, whole of the suit property and other property of defendant No.1 falls on the southern side of pucca road whereas plaintiff has pleaded in his pleading of plaint that suit property measuring 9 marlas of defendant No.1 falls on the northern side of road due to wrong construction of road on the spot. As such, specific performance of alleged agreement to sell is not permissible under law due to uncertainty and ambiguity regarding identification of the suit property. Aks Shajar proving said fact is attached.

3B That present suit is also bad for non-joinder of necessary parties. It is added here that due to wrong construction of pucca road on the spot, only 6 marlas of suit property owned by the defendant No.1 falls on the northern side of road and rest of the suit property on northern side of pucca road i.e. Subject matter of alleged agreement to sell is ownership of defendant No.1's real brother who is neither a party to the present suit nor is aware about the pendency of the present suit pertaining to his ownership in this Hon'ble court. Hence the present suit is bad for non-joinder of necessary party i.e.

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defendant No.1's real brother. It is important to mention here that plaintiff's real father Jeevan Singh, who is also general attorney of plaintiff while deposing in the court in the present case as PW1 has also admitted in his cross-examination that suit property is also owned by defendant No.1's real brother except the defendant No.1."

When the application was filed, the suit was at initial stage, but the factum of closure of the evidence by the plaintiff has not been denied by either of the party. The suit is now slated for defendants' evidence and the plaintiff would have a right to cross-examine the defendants' witnesses in respect of the contemplated evidence qua amended pleadings. The amendment is essential and necessary as it would help the Court for adjudication of the *lis*. It would not tantamount to withdrawing of the admission, much less, substitution of any right accrued in favour of the plaintiff. The trial Court failed to notice all these facts, thus, there is grave illegality and perversity in the impugned order, much less, without jurisdiction and the same is hereby set aside. Resultantly, the present revision petition stands allowed subject to the payment of costs of ₹5,000/-, which shall be condition precedent.

14.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**