

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

CR-2040-2019(O&M)

Date of decision:-22.10.2019

Sarwan Singh

...Petitioner

Versus

Charanjit Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Jatinder Nagpal, Advocate
for the petitioner.

Mr.D.S. Gurna, Advocate
for the respondents.

H.S. MADAAN, J.

This revision petition is directed against the order dated 2.2.2019 passed by the trial Court vide which an application under Order 6 Rule 17 CPC read with Section 151 CPC filed by the revisionist/plaintiff was dismissed.

Briefly stated, facts of the case are that plaintiff Sarwan Singh had brought a suit for possession by way of specific performance on 6.7.2018, on the basis of agreement to sell dated 3.8.2017 said to have been executed by defendants in his favour. The defendants had already filed a caveat dated 29.5.2018 and on coming to know about filing of the suit, they filed written statement taking up

a plea that no such agreement was entered into by them with the plaintiff and the agreement set up by the plaintiff is result of forgery and fraud; that the said agreement relates to land including 25 bigha 13 biswas of land, which is not even ownership or in possession of answering defendants; that at the time of alleged agreement to sell defendant – Balbir Singh was confined in Central Jail, Patiala in a case bearing FIR No.85 dated 23.6.2016, under Section 15 of NDPS Act, Police Station Julkan.

Subsequently, the plaintiff moved an application seeking amendment of the plaint contending that on going through the contents of written statement, he came to know about the fraud committed by the defendants with him since wrong khewat/khatouni and khasra numbers of the land, which were neither their ownership nor in their possession had been mentioned in agreement to sell dated 3.8.2017. The plaintiff and defendants convened Panchayat. Several meetings were held and ultimately with interference of respectables and Panchayat members, the defendants agreed to execute fresh agreement to sell giving correct khewat/khatouni and khasra numbers, which are in possession and ownership of defendants and a new agreement dated 6.8.2018 signed by the defendants was executed in presence of witnesses Dalbir Singh and Harbans Singh giving correct khasra numbers. Defendants Charanjit Singh and Balbir Singh had also executed affidavits in which they had admitted

having written incorrect khewat/khatouni and khasra numbers in the agreement to sell dated 3.8.2017 and receipt of Rs.61 lakhs as earnest money by all the three defendants from the plaintiff. The plaintiff wanted to amend the plaint as per change in circumstances in execution of fresh agreement to sell dated 6.8.2018 by defendants in favour of the plaintiff, giving the necessary details.

That application was vehemently contested by the defendants denying that they had entered into any fresh agreement or received any earnest money and further no ground to allow the amendment of plaint was made out.

Learned trial Court had dismissed the application by making following observations:

5. The present application for amendment has been filed in order to seek Specific Performance of the agreement to sell dated 6.8.2018. The present suit has been filed by plaintiff on 6.7.2018 claiming Specific Performance of the agreement to sell dated 3.8.2017. The defendant in the written statement have denied the execution of any such agreement to sell and alleged that the same is forged and fabricated one. It has also been pleaded that defendant Balbir Singh was confined in Central Jail, Patiala in case bearing No.FIR No.85 dated 23.6.2016, at the time of alleged agreement to sell. This

learned counsel for defendant has argued that plaintiff has created a new agreement to sell in order to meet the plea of the defendant regarding Balbir Singh not being available for the purpose of execution of the agreement to sell dated 3.8.2017; he being in custody. The new agreement to sell has been created after filing of the present suit. This Court is of the opinion that plaintiff has tried to bring out a new cause of action by relying upon a new agreement to sell. It is hard to believe that contesting party would enter into an agreement to sell once it is already in litigation with the plaintiff after filing of the suit. An entirely new and inconsistent plea is being raised by the plaintiff vide the proposed amendment. Order 6 Rule 17 CPC provides that:- “an amendment can be allowed only, if it is inconsonance with the previous plea taken by the plaintiff. An entirely new plea or new case cannot be allowed to be brought out by the plaintiff in an application for amendment”. It has been held in Ma Shwe Mya V Maung Mo Hnaung; AIR 1922 PC249, that:- “once the earlier agreement has been negatived, to permit the plaintiff to set up and establish another and independent contract altogether would be to go outside the provisions established by the

Code”. Relying upon this judgment, plaintiff cannot be allowed to create an altogether new cause of action through the proposed amendment. Thus, the plea of the plaintiff-applicant does not inspire confidence of this Court. No such amendment can, therefore, be allowed. As such, the present application is hereby dismissed and stands disposed of accordingly.

This order left the plaintiff/revisionist aggrieved, who has filed the present revision petition, notice of which was given to defendants/respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

I find that the order is quite detailed and well reasoned. It does not come out to suffer from any illegality or infirmity much less apparent on the face of it. The order is certainly not perverse resulting in miscarriage of justice. The trial Court was justified in dismissing the application. It has to be taken note that before the plaintiff filed the suit, the defendants had instituted a caveat and put an appearance in the Court there and then filing written statement contesting the suit vehemently on the ground of fraud and misrepresentation. It is highly unlikely that under the circumstances they would have entered into a fresh agreement giving different khewat/khatouni and khasra numbers. If in fact the defendants were

to enter into any such agreement, they would have definitely informed the Court in that regard or sought permission from it. If the defendants were to execute the fresh agreement then where was the anxiety to oppose the suit at the first instance. Even now they are contesting the suit very hotly. The version set up by the plaintiff does not seem to be plausible or probable. In any case, he wants to make wholesale change in the description of the land. The subject matter of both the agreements is different having different khasra numbers, khatouni numbers etc. How the two cause of action can be clubbed in such a manner has not been explained satisfactorily.

Finding no merit in the revision petition, the same stands dismissed.

22.10.2019.
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No