

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

CR No.5226 of 2019

Date of Decision : 29.08.2019

Resham Singh

..... Petitioner

Versus

Ravel Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. K. R. Dhawan, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This revision petition is directed against the impugned order dated 14.08.2019 passed by the Ld. Civil Judge (Senior Division) Zira, vide which the application filed on behalf of the petitioner-plaintiff seeking amendment of his original plaint was dismissed.

2. Background of the matter is that the suit was filed by the petitioner seeking specific performance of an agreement for sale in respect of the disputed property which was entered into between the contesting sides on 15.07.2011. His case was that possession of the disputed property was delivered to him on that very date.

3. It appears that the suit was originally dismissed by the Ld. Trial Court on 02.08.2017 after which the petitioner preferred Civil Appeal No.157 of 14.09.2017 which was decided by the Ld. Additional District Judge, Ferozepur vide his judgment

dated 10.12.2018 (Annexure P-2). By way of the said judgment, the Ld. Appellate Court set aside the original judgment and decree of the Ld. Trial Court and remanded back the matter with the following directions:-

“For deciding it afresh after affording two effective opportunities to both the parties, to lead evidence, if any. The learned trial Court may also frame an issue as to whether the possession was actually delivered to the appellant at the time of the alleged agreement. The parties are directed before the learned trial court on 08.01.2019 at 10.00 AM. Lower court file along with copy of this judgment be sent to the concerned trial court well before the date fixed before it.”

4. As can be seen from the above reproduced extracts from the direction of the Ld. Appellate Court, the question of date of possession was to be decided by the Ld. Trial Court on the basis of any additional evidence, and two effective opportunities for that purpose were granted to both sides along with liberty to the Ld. Trial Court to frame an issue *“as to whether the possession was actually delivered to the appellant at the time of the alleged agreement”*.

5. It is therefore clear that the dispute before the Ld. Appellate Court had arisen in view of the specific pleading of the respondents-defendants which has been noted in Para No.5 of the Appellate Court's Judgment to the effect that *“the possession of the land was not delivered to the appellant”*.

6. It was nowhere the case of the petitioner till that time he had already been in possession of the disputed property since even before the alleged agreement to sell.

7. After the matter was sent back on remand, he filed his application for amendment on 06.08.2019 at the following additional averments in his original plaint”-

“3-A That true facts are that previously also, the defendants had entered into agreement to sell the land in dispute with the plaintiff on 15.12.2008 and the agreement of sale was reduced into writing which was witnessed by Gurjinder Singh S/o Major Singh and Ranjit Singh S/o Bhajan Singh, both Rs/o V. Lehra-Bet, Tehsil Zira, Distt. Ferozepur. The possession of the land in dispute was delivered by the defendants to the plaintiff at the time of agreement of sale dated 15.12.2008 and since then, the plaintiff is in possession of the land in dispute on the spot. The previous agreement was canceled, but the possession of the land continued with the plaintiff.”

8. It is noteworthy that even with the said proposed amendment, there is nothing to indicate that copy of the aforesaid previous agreement dated 15.12.2008 was attached along with the application, although it is mentioned in Para No.6 of the present revisional application that it was attached with the amendment application.

9. Be that as it may, fact of the matter is that the additional averments now sought to be incorporated by the petitioner are

palpably outside the scope of the limited liberty granted to the parties to determine whether possession of the disputed property was delivered to the petitioner on the date originally claimed i.e. 15.07.2011 or not.

10. It can also not be said that the facts regarding the previous agreement dated 15.12.2008 were not within the petitioner's knowledge at the time of filing the original plaint, which he now claims that he had not included in the original pleadings being an "illiterate person" having no knowledge whether he should have to show the previous agreement to his counsel. This Court has glanced over the previous agreement which although not filed along with the present revision, but was nevertheless tendered by Ld. Counsel for the petitioner for perusal on the demand by the Court. It goes to reveal that the said agreement by mutual consent of the parties on 15.11.2009 had been extended for the purpose of execution of the Sale Deed till 25.07.2010. It is then claimed to have been cancelled by the parties apparently because the land in question at the relevant time was the subject matter of the same pending dispute.

11. Perusal of the subsequent agreement dated 15.07.2011 which is on the basis of the present suit however goes to reveal that the concerned dispute pertaining to the land in question was still continuing. In such circumstances, it is incomprehensible as to how and why the petitioner could have entered into a fresh agreement in

which existence of the dispute which apparently led to cancellation of the previous agreement was still recognized. To sum up, therefore, this Court is not convinced that omission to plead the previous facts, now sought to be incorporated by way of the amendment application, was purely on account of the same *bona fide* oversight or lack of knowledge on the part of the petitioner.

12. In view of the aforesaid observations, this Court finds no merit in the present revision petition and the same stands dismissed.

(SUDIP AHLUWALIA)
JUDGE

August 29, 2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No