

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

C.R No. 8000 of 2019
Date of decision: 16.12.2019

Ravi Goyal & Anr.

... Petitioners

Vs.

Kulbir Singh & Ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present:- Mr. S.S. Swaich, Advocate, for the petitioners.

ALKA SARIN, J.

The present revision petition is directed against the order dated 02.11.2019 (Annexure P-11) passed by the Additional Civil Judge (Senior Division), SAS Nagar, Mohali, whereby the application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') filed by the plaintiffs for amendment of the plaint has been dismissed.

The brief matrix of the facts, which are necessary to be noticed for adjudication of the present *lis*, are that the plaintiff-petitioners filed the present suit for specific performance of agreement to sell dated 30.03.2015, executed by respondent Nos. 1 and 2- herein qua the land in dispute.

Written statements were filed by the defendants contesting the suit.

The case of the plaintiffs-petitioners is that during the pendency of the present suit another Civil Suit No. 630 of 2017 was filed by Sh. Rajinder Kumar Mittal and Paramdeep Kaur (respondents No. 5 and 6 – herein), wherein the plaintiffs-petitioners were also impleaded as a party and were arrayed as defendants No. 5 to 6 - therein. The said Civil Suit No. 630 of 2017 was filed for declaration to the effect that plaintiffs therein were owners and in possession of land measuring 10 acres purchased by them vide two separate sale deeds dated

judgment and decree dated 02.02.2013 passed by the Court of Additional Civil Judge (Senior Division) Mohali, vide which suit of Angrej Kaur was dismissed, had no effect upon the said sale deeds and further for permanent injunction. It is stated by the plaintiffs-petitioners- herein that the said Civil Suit No. 630 of 2017 was withdrawn qua the defendants No. 3 to 10 therein, vide order dated 10.04.2018 (which included the petitioners herein). It has further been stated by the counsel for the petitioner that the said Civil Suit No. 630 of 2017 was decreed on the basis of a compromise dated 23.04.2018, vide judgement and decree dated 08.08.2018 passed by the Additional Civil Judge (Senior Division) S.A.S. Nagar, Mohali. The plaintiff-petitioners, thereafter, moved an application under Order 6 Rule 17 for amendment of the plaint in the present suit seeking a declaration that the aforesaid judgment and decree dated 08.08.2018 is null, void and not binding on the plaintiffs-petitioners and having no effect qua the rights of the plaintiffs-petitioners. Alongwith the said application another application under Order 1 Rule 10 CPC was also moved for impleading Rao Varinder Singh as a defendant in the present case. The trial Court has dismissed the said application filed under Order 6 Rule 17 C.P.C being devoid of any merit. Hence the present revision petition.

Learned counsel for the petitioners has argued that the amendment sought is necessary inasmuch as he wishes to challenge the judgment-decree dated 08.08.2018 as not binding upon his right qua the agreement to sell dated 30.03.2015. He has relied upon the following judgments:

1. *Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors., 2006(2) R.C.R (Civil) 577;*
2. *Gurbakhsh Singh & Ors. Vs. Buta Singh & Anr., 2018(2) R.C.R (Civil) 916;*
3. *N.C.Bansal Vs. Uttar Pradesh Financial Corporation & Anr.,*

2018(2) RCR (Civil) 129;

4. *Rameshkumar Agarwal Vs. Rajmala Exports Pvt. Ltd. & Ors.,*

2012(2) RCR (Civil) 739;

5. *Sampath Kumar Vs. Ayyakannu & Anr., 2002(4) RCR (Civil)*

566;

I have heard the learned counsel for the petitioners and I am of the considered opinion that the present application is nothing but merely a delaying tactic inasmuch as a perusal of the amendment application, filed by the plaintiffs-petitioners under Order 6 Rule 17 C.P.C, clearly reveals that it is the case of the plaintiffs-petitioners themselves that the decree dated 08.08.2018 is not binding upon their rights as the suit against them had been dismissed as withdrawn. Having taken this stand the counsel for the plaintiff-petitioners is unable to explain as to why the said judgment and decree dated 08.08.2018 is sought to be challenged in the present suit. It transpires from a perusal of the judgment and decree dated 08.08.2018 that it was passed in the presence of counsel for the present plaintiff-petitioners. If at all the plaintiff-petitioners felt aggrieved by withdrawal of the suit qua them they had sufficient remedies available in law with them. The plaintiff-petitioners remained present during the proceedings in the said suit even after the withdrawal qua them. The plaintiff-petitioners even filed an application for rejection of the compromise dated 23.04.2018, which was dismissed by the trial Court on 08.08.2018. The plaintiff-petitioners chose not to challenge the same.

There is no quarrel with the proposition of law that amendments to the pleadings can be allowed. The judgments relied upon by the counsel for the petitioners also lay down that amendment should be allowed when character and nature of the suit does not change. However, that is not the case in the present

amendment application. It is trite that an amendment sought in the plaint which

changes the nature of the suit cannot be permitted. The proposed amendment sought by the plaintiffs-petitioners would not only change the entire nature of the suit but would also delay the proceedings in the present matter. It has been noticed by the Trial Court that the plaintiffs-petitioners have not lead any evidence despite the issues having been framed on 21.03.2018. It is also to be seen that the present suit filed by the plaintiff-petitioners for possession by way of specific performance and a declaration has also been sought to the effect that two sale deeds dated 17.08.2007 executed by Harbans Kaur and late Angrej Kaur are illegal, null and void qua the rights of the plaintiffs. The plaintiff-petitioners instead of proceeding with the suit appear to be adopting delaying tactics and filing of the present application seems to be yet another effort to delay the proceedings.

I am of the considered opinion that in view of the stand taken by plaintiffs-petitioners themselves that the judgment and decree dated 08.08.2016 is not binding upon them as the suit qua them stood withdrawn, the present amendment is neither just nor necessary. Also in the present case, pleadings are complete, issues framed and trial has already commenced and the amendment if allowed at this stage would only cause more delay in the decision of the suit.

I, therefore, find no merit in the present revision petition. Hence, the same is dismissed.

December 16 , 2019
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(ALKA SARIN)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No