

CR-3570-2019

Date of decision: 23.09.2021

Kuldeep Singh

.....Petitioner

versus

Santosh Kaur Parihar

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Chanchal K. Singla, Advocate
for the petitioner.Mr. Deepak Verma, Advocate
for the respondent.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

This is civil revision petition under Article 227 of the Constitution of India by petitioner-Kuldeep Singh, the then plaintiff before the Court of the learned Additional Civil Judge (Senior Division), Garhshankar, whereby, this challenge, has sought to set aside the order dated 22.04.2019 (Annexure P-1), whereby, an application under Order 6 Rule 17 CPC read with Section 151 CPC

for amendment of the plaint filed by the present revisionist, the then plaintiff, stood declined by the impugned findings.

Heard counsel for the parties and perused the records.

The plaintiff-Kuldeep Singh had filed simplicitor suit for possession by way of specific performance of agreement to sell dated 10.04.2016 seeking directions against respondent-Santosh Kaur Parihar, the then defendant, to execute the sale deed in respect of the land detailed in the head note of the suit.

During the course of proceedings, instant application under Order 6 Rule 17 read with Section 151 CPC was filed by the plaintiff seeking amendment of the plaint, incorporate suit for recovery of Rs.33 lakh from the defendants on the strength of the agreement to sell in question.

Upon the submissions of the parties, it is well clear that the initial pleadings were only in respect of suit for possession by way of specific performance and no other relief was sought by the plaintiff and by the amendment so sought, the plaintiff/revisionist is trying to introduce an entirely new relief for suit of recovery and thereby going to the roots of the case in hand. The Supreme Court of India in 'Prem Raj versus D.L.F.H & C. Ltd.' AIR 1968 Supreme Court 1355 and in another view 'Jawahar Lal Wadhwa verseus Haripada Chakroberty' AIR 1989 Supreme Court 606, had held that it is specifically provided in Section 37 of the Specific Relief Act that a plaintiff by way of specific performance of the contract can

alternatively sue for rescission of the contract but the converse is not provided and, therefore, it is not open for the plaintiff to sue for rescission of the agreement and in the alternate issue for specific performance holding out that the omission being a deliberate and intentional, in such a case, no such alternative prayer is left open to the plaintiff. In line with the foregoing discussions, not only that by introducing the amendment, that is being sought by the petitioner/plaintiff, the very nature of the suit is likely to be changed and which would be to, the prejudice to the opposite party. Since the petitioner has filed merely a suit for enforcement of Agreement by way of possession, in question and, therefore, clearly disentitles him to the alternate relief of recovery of the amount, which he never sought initially and, therefore, cannot be allowed to amend his plaint to claim such a relief and now is left to the sole judicial discretion of the trial Court to grant any relief it might deem appropriate.

The learned lower Court in the impugned findings has rightly concluded that when the pleadings were complete way back in the year 2016, after almost 2 ½ years of filing of the written statement by the defendant, the petitioner/plaintiff has sought to incorporate this petition after it was duly accepted by the defendant in her written statement that she is always ready and willing to perform her part and, therefore, at this juncture, relief of recovery was not permissible and has rightly dismissed the application. Being not only filed after 2 ½ years but also not legally permissible.

This Court does not find any illegality in the orders, in question. There are no merits in the instant revision and, thus, the same stands dismissed.

23.09.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No