

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

CR-2244-2021

Date of decision:-6.10.2021

Mohinder Singh and another

...Petitioners

Versus

Surinder Singh and others

...Respondents

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

Present: Mr.Naresh Kumar, Advocate
for the petitioners.

H.S. MADAAN, J.

Case taken up through video conferencing.

In a suit for specific performance titled “Surinder Singh Versus Mohan Singh and others” pending in the Court of Civil Judge (Jr.Divn.), Hoshiarpur, when the case was at the stage of evidence, defendant – Mohinder Singh submitted his affidavit Ex.DW1/A. Subsequently, he moved an application for correction in the affidavit contending that inadvertently due to typographical mistake defendant has wrongly mentioned in his affidavit that Mohan Singh – defendant No.6 had executed an agreement to sell dated 24.8.2006 with respect to 18 acre 5 kanals of land situated at village Phalahi, District Hoshiarpur for

consideration of Rs.6,25,000/- per acre in favour of Mohinder Singh receiving Rs.20 lakhs as earnest money and thereafter he had executed power of attorney dated 8.6.2007 in favour of Mohinder Singh instead of mentioning that Mohan Singh had executed an agreement to sell dated 24.8.2006 with respect to 18 acres and 5 kanals land and after receiving total sale consideration Mohinder Singh and Avtar Singh, Mohan Singh had executed a power of attorney in favour of Mohinder Singh.

That application for correction in the affidavit was contested by the plaintiff contending that applicant had made totally false story and he cannot be allowed to change his affidavit since there is no provision in law for doing so.

After hearing arguments, the trial Court vide order dated 16.8.2021 had dismissed the application. For ready reference, the operative part of the order is being reproduced as under:

6. It is argued by Ld. Counsel for the applicant that inadvertently due to typographically error aforesaid facts as detailed in the affidavit DW1/A has been mentioned. Per contra, it is argued by Ld. Counsel for respondents that aforesaid error in affidavit DW1/A amounts to admission and part of applicant Mohinder Singh. I have perused the contents of the application along with the entire record. The amendment sought by applicant falls beyond the ambit of Order 6 Rule 17 CPC and even under Section 151 of the CPC purported amendment is not necessary for determining the real question in controversy between the parties. Further there is absence of due diligence on the part of applicant

seeking the amendment in question. Accordingly, the present application stands dismissed. Now to come u on 26.8.2021 for cross examination of DW-1 as well as for remaining evidence of the defendant.

This order left the defendants aggrieved and they have filed the present civil revision petition.

I have heard learned counsel for the revisionists besides going through the record and I find that the revision petition is doomed for failure.

Whenever an affidavit of a witness especially of a party to the litigation is to be tendered, that is prepared in a very careful manner, though drafted by counsel, the deponent is supposed to go through it and then put his signatures/thumb impressions. Not only this, the affidavit is required to be attested by a Notary Public or Oath Commissioner meaning thereby that the attesting authority is to read over the contents of the affidavit and if the deponent admits the contents only then the said affidavit is to be attested and then produced in evidence. The affidavit in question in this case has been duly attested. It is unlikely that the Oath Commissioner/Notary Public, who attested the affidavit had not read over the contents to defendant No.1 or that he had put his signatures thereon without knowing the contents. If that is so, there is no question of any error having crept up in the affidavit due to typographical mistake. The defendant to wriggle out by the tight corner by taking such type of pleas and once the cat came out of the bag, then the defendant made a turn

around and moved an application seeking amendment in the affidavit. Order 6 Rule 17 CPC deals with amendment of pleadings. The affidavit to be tendered in evidence is not covered by definition of pleadings. There is no question of any error having crept in the affidavit on account of typographical mistake. If the affidavit filed on behalf of the defendant is not in consonance with his pleadings, he may suffer for his lapse. No correction could be allowed to be made in the affidavit by way of amendment. The application so moved by the defendant was rightly declined by the trial Court vide the impugned order, which does not call for any interference while exercising jurisdiction under Article 227 of the Constitution of India.

Thus, finding no merit in the civil revision petition, the same stands dismissed.

6.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No