

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CR No.6573 of 2018(O&M)
Date of Order: 09.05.2022

Ramesh Kumar Bansal

..Petitioner

Versus

Rajesh Kumar

..Respondent

CR No.6890 of 2018(O&M)

Ramesh Kumar Bansal

..Petitioner

Versus

Honey

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Swarn Singh Tiwana, Advocate, for the petitioner.

Mr. Satvir Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

Civil Revision No.6573 and 6890 of 2018, arising from the identical orders passed by the trial Court in two connected suits shall sand disposed of.

The plaintiff has filed two suits for grant of decree of possession by way of specific performance of the agreement to sell. The plaintiff and defendant in both the suits are common. Immediately after filing of the suits, two applications filed for permission to amend the suit, particularly when no notice of the suits had been served on the defendant,

have been dismissed by the trial Court. The amendment sought to be incorporated reads as under:-

4(a) In fact at the time of entering into agreement of sale dated 16.04.13 the defendant did not have any copy of Jamabandi for describing the description of the khasra nos. of the property to be sold & the description was got described by him in the agreement from a slip of paper.

“4(b) Later on going through the revenue record such as Jamabandi for the year 2010-11 before 16.09.13 the plaintiff came to know that the defendant is not shown in possession of any specific part out of 10 Kanals 16 Marlas or within the specific boundaries mentioned in the said agreement of sale and that the total land is shown to be joint of many co-sharers who are shown to be in joint possession & thus the plaintiff came to know that the defendant has made false recitals in the agreement of sale regarding his alleged possession over 2 Kanals 10 marlas within the specific boundaries mentioned in the agreement of sale and whereas the defendant has been making false averments and recitals in the agreement of sale regarding his alleged possession of 2 Kanals 10 Marlas within the boundaries mentioned in the agreement of sale.

4(C) Mutation of 2 Kanals 10 marlas within specific boundaries mentioned in the notice was never sanctioned in the name of the defendant & had the mutation been sanctioned of 2 Kanals 10 marlas within the boundaries, then same must have been reflected in the girdawari & whereas in the girdawaris the defendant had never been shown till today in specific possession of 2 kanals 10 marlas within the boundaries mentioned in the agreement of sale. Moreover at the time of entering into an agreement of sale, the defendant represented that the property to be sold was within the Municipal limits of Municipal Council, Sirhind, whereas the plaintiff has come to know that the land within the boundaries mentioned in the agreement of sale is outside the limits of Municipal council, Sirhind and as such, as per the notification issued by Departments of Govt. of Punjab the plaintiff shall not be able to made any construction within the area of 100 feet from the scheduled road & 10 Kanals 16 Marlas mentioned at letter X in the heading of the plaint abuts on the scheduled road.

4(d) The plaintiff abandons his relief for specific performance and claims the relief for recovery of Rs. Twenty Two Lacs as claimed in the alternative relief.

4(e) Thus the defendant has committed willful breach and violation of agreement of sale and has intentionally made false recital regarding his alleged possession over 2 Kanal 10 marlas within specific boundaries and that the suit property is within the limits of Municipal council, Sirhind and thereby induced the plaintiff to part with heavy amount of Rs. Seventeen Lacs as earnest money.”

The plaintiff also intends to amend the heading the plaint by substituting the same with the following heading:-

“ A. Suit for recovery of Rs. Twenty Two Lacs i.e. Rs. Seventeen Lacs paid as earnest money under the agreement of sale dated 16.04.13 executed by the defendant in favour of plaintiff for selling the property mentioned at letter X below + Rs. Five Lacs being consolidated interest in the alternative as damages having been suffered by the plaintiff at the instance of defendant for having retained the said amount of Rs. Seventeen Lacs received by him as earnest money under the said agreement of sale alongwith pendente lite and future interest till recovery @ 12 % pa. with all costs charges and expenses of the suit.

B. For permanent injunction restraining the defendant, his servants and agents from alienating the suit property mentioned at letter X below by sale, mortgage, gift, exchange or in any other manner in favour of any person till the amount of Rs. Twenty Two Lacs alongwith interest & costs of the suit is recovered from the suit property.”

The application has been dismissed on the ground that the nature and character of the suit shall stand changed.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

On a careful reading of the proposed amendment, it is evident that even originally the suit is based upon the alleged agreement to sell. Now the plaintiff wants to claim the alternative relief, while giving up to sue for relief of specific performance of the agreement to sell. Thus, the basic character of the suit will not be changed on allowing such an amendment. Thus, the trial court has erred in rejecting such an amendment.

Under the Specific Relief Act, 1963, the plaintiff is anyways,

entitled to seek alternative/additional relief.

Keeping in view the aforesaid facts, both the revisions petition are allowed and the order under challenge is set aside.

All the pending miscellaneous applications, if any, are also disposed of.

May 09, 2022
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(ANIL KSHETARPAL)
JUDGE

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