

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

CR-1275-2020 (O&M)

Date of Decision: February 02, 2022

Hakam Singh (now deceased) through LRs

...Petitioner

VERSUS

Amarjodh Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.K.B.Raheja, Advocate
for the petitioner.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

CM-869-CII-2022

The present application has been filed for placing on record application under Order 6 Rule 17 CPC and reply, as Annexure P-4 and P-5.

In view of the averments made in the application, the same is allowed, subject to just exceptions. Annexures P-4 and P-5 are taken on record.

CR-1275-2020

The present revision petition has been filed by the LRs of Hakam Singh namely Gurpreet Singh and Jaskaran Singh, to assail the order dated 09.12.2019 (Annexure P-3) passed by learned Civil Judge (Jr. Divn.), whereby, the application filed by the petitioners for seeking amendment of the written statement, has been dismissed.

During the pendency of the suit for possession by way of

specific performance of agreement to sell dated 14.06.2016 filed by Amarjodh Singh against Hakam Singh, an application under Order 6 Rule 17 CPC, for amendment of the written statement, was filed by the present petitioners, who were impleaded as legal heirs of Hakam Singh-defendant. The plaintiff had filed the suit for possession by way of specific performance of the agreement to sell dated 14.06.2016. However, Hakam Singh-defendant, when made appearance, in pursuance of the notice issued by the Court, in the written statement, had taken the plea that the alleged agreement is fake, forged and fabricated document and also pleaded that neither he executed agreement to sell nor received any sale consideration.

However, during the pendency of the suit, the defendant had passed away and the petitioners were impleaded as legal heirs and they engaged another counsel for contesting the said suit. It is averred in the application under Order 6 Rule 17 CPC that when the petitioners consulted the counsel for making appearance in the present suit and to address the arguments, it came to their notice that the necessary material facts could not be brought on record, which are required for the just and proper adjudication of the suit. The amendment of written statement was sought by inserting sub-para in the end of para 1 and before para 2, the detail whereof, is given in the application, which relates to the entire suit land to have been mortgaged with the banks, before the date of execution of the alleged agreement dated 14.06.2016 and on this account, the petitioners wanted to assert, as to why the purchasers will purchase the property, upon which, loan amount, including the interest, was more than its purchase value.

Now, it is submitted that the application has been wrongly

impugned order, it has been observed by the lower Court that the amendment sought, even though, is explanatory in nature, but admittedly the jamabandi, in which the said facts are recorded, is placed on record by the plaintiff, during his evidence.

It is pertinent to mention that though in the application, it is stated that it was at the time of preparation of the arguments by the subsequent counsel that it came to the notice that certain facts have not been asserted in the written statement but however, it is important to note that lower Court had observed that plaintiff had stepped into witness box on 17.12.2018 and produced the evidence for the first time. Though, the subsequent counsel was engaged but however, he had conducted cross-examination of the plaintiff as well as his witnesses. At that time, fact regarding the proposed amendment was available on the jamabandi produced by the plaintiff. As such, it is evident that there is no material coming on record, which was not within the knowledge of the petitioners, at the time of conducting the cross-examination of the plaintiff. Even the evidence of the plaintiff had since been closed and case was fixed at the stage of recording of the defendant's evidence, subject to last and final opportunity, the aforesaid application was filed. In these circumstances, the prayer made by the petitioners to reserve their right for cross-examination of the plaintiff's witnesses, means re-opening of the case.

There is no merit in the present application, as the material on record, with regard to the proposed amendment was already available on the file and plaintiff and his witnesses were examined by the subsequent counsel engaged by the petitioners. In the light of the same, learned lower

statement.

Hence, there is no merit in the present revision petition and the same is hereby dismissed.

February 02, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No