

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

CR-5640-2018
Reserved on 15.11.2023
Date of decision: 08.12.2023

Mandeep Kumar and others

...Petitioners

Versus

Surinder Ram @ Surinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Nitin Thatai, Advocate and
Ms. Monika Thatai, Advocate for the petitioners.

Mr. Navkesh Singh, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioners/defendants under Article 227 of Constitution of India, seeking quashing of order dated 04.08.2018 Annexure P-4 passed by the Court of Civil Judge (Junior Division), Ludhiana, whereby an application filed by respondent/plaintiff under Order 6 Rule 17 CPC for amendment of the plaint has been allowed in civil suit titled Surinder Ram @ Surinder Singh Vs. Mandeep Kumar and others.

2. The brief facts of the case of respondent/plaintiff are that he purchased suit property situated in Village Mundian Kalan, Tehsil and District Ludhiana, vide agreement to sell dated 04.10.2009 from Bhajan Kaur and thereafter, he raised construction therein. The respondent/plaintiff being owner and in possession of the suit property on the basis of full and final agreement to sell dated 04.10.2009 filed civil suit titled Surinder Ram

Vs. Jaswant Kaur @ Kulwant Kaur etc. bearing No.102 of 2010 against petitioners No.2 & 3 with regard to aforesaid property to restrain them from interfering into peaceful possession of the respondent/plaintiff over the suit property. That petitioner No.1 Mandeep Kumar filed civil suit titled Mandeep Kumar Vs. Surinder Singh @ Surinder Ram for grant of decree for specific performance of agreement to sell dated 17.04.2009 alleged to be executed by respondent/plaintiff in favour of said Mandeep Kumar. That actually, no such agreement to sell dated 17.04.2009 was ever executed by respondent/plaintiff in favour of any person including Mandeep Kumar and that the said agreement to sell dated 17.04.2009 is forged and fabricated documents and is even otherwise, result of fraud. That later on respondent/plaintiff was illegally deprived of the possession of the suit property which is now being in illegal possession of the petitioners and respondent/plaintiff sought recovery of Rs.2,88,000/- on account of illegal occupation of the suit property by the petitioners for the period from 16.08.2013 to 15.08.2016 at rate of Rs.8,000/- per month along with interest. Accordingly, suit for recovery has been filed by respondent/plaintiff against the petitioners.

3. The suit was contested by the petitioners and they filed written statement and thereafter, issues were settled by the trial Court and after recording of certain evidence, respondent/plaintiff filed an application for amendment of the plaint wherein amendment was sought on the ground that in the original plaint date of agreement to sell which was executed by Bhajan Kaur in his favour, was written as 04.10.2009 in place of 04.11.2009 due to typographical mistake. The application for the amendment of the plaint was

contested by the petitioners. The learned trial Court allowed the said application vide order dated 04.08.2018 subject to cost of Rs.1,000/-.

4. Being aggrieved, the petitioners have filed the present petition.

5. I have heard the counsel for the parties.

6. The counsel for the petitioners submits that by way of amendment the respondent intends to take plea that agreement to sell executed by Bhajan Kaur is dated 04.11.2009 and was not executed on 04.10.2009 as has been pleaded in the original plaint. The counsel for the petitioners further submits that even in criminal complaints lodged by the respondent prior to filing of the suit, the date of said agreement was written as 04.10.2009.

7. The counsel for the petitioners has further argued that the application for amendment of the plaint was filed not just after the commencement of trial but even after the recording of substantial evidence. It has been further contended that in the light of the proviso to Order 6 Rule 17 CPC, the said application for amendment of the plaint was not maintainable at the belated stage of the trial. It has been further argued that the agreement in question was relied upon by the respondent/plaintiff in the plaint and he was fully aware about the date of its execution from the very beginning but did not move any such application for rectification of alleged typographical mistake at the earliest. That thus, respondent/plaintiff has failed to establish that in spite of due diligence he could not have raised the matter before the commencement of trial. It is further contended that the proposed amendment is going to change the nature and character of the suit and further prejudice the defence already taken by the petitioners. The

counsel for the petitioners further submits that the impugned order being illegal deserves to be set aside. In support of his contentions counsel for the petitioners has placed reliance upon decisions of Hon'ble Supreme Court in ***Vidyabai Vs. Padamalatha 2009 (1) RCR (Civil) 763*** and ***Ajendraprasadji N. Pande & another Vs. Swami Keshavprakeshdasji N. and others 2007 (1) RCR (Civil) 481*** wherein it was held that proviso appended to Order 6 Rule 17 CPC restricts the power of the Court and it puts an embargo on exercise of its jurisdiction. The Hon'ble Supreme Court has further observed that the Court's jurisdiction in a case of this nature is limited and accordingly, the appeal was allowed and application seeking amendment of written statement at belated stage was dismissed. Reference in this regard is also made the decision of this Court in *Rajeev Singla Vs. Manjeet Singh others* having CR No.7100 of 2016 decided on 26.10.2016 wherein also it was held that as per proviso to Order 6 Rule 17 CPC no application for amendment should be allowed after the commencement of the trial unless the Court comes to the conclusion that in spite of due diligence the parties could not have raised such amendment before the commencement of the trial.

8. On the other hand, the counsel for the respondent/plaintiff while supporting the impugned order has *inter alia* contended that the proposed amendment is not going to change the nature of the suit in any manner. It has been further contended that due to typographical mistake the date of agreement to sell was mentioned as 04.10.2009 in place of 04.11.2009 in the plaint and when the said clerical mistake came to notice of the respondent, immediately thereafter, the application for amendment in plaint was filed

and the same has been rightly allowed by the learned trial Court as the said amendment is necessary for proper adjudication of suit. Prayer is made that the present petition be dismissed being devoid of merits.

9. I have considered the submission made by counsel for the parties.

10. In the original plaint respondent propounded one agreement to sell dated 04.10.2009 executed by Bhajan Kaur in favour of the respondent with regard to suit property. The respondent filed an application seeking amendment of plaint on the ground that due to typographical mistake in the original plaint, it was written that the aforesaid agreement to sell was executed on 04.10.2009, whereas the actual date of execution of the said agreement was 04.11.2009. From the perusal of the said agreement to sell, the date of execution mentioned in the same is 04.10.2009 but it appears to be typed on a stamp paper dated 03.11.2009. Be that as it may, it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment as has been observed by the Hon'ble Supreme Court in ***Sampath Kumar Vs. Ayyakannu and another (2002) 7 SCC 559.***

11. The aforesaid agreement to sell is a material document for proper adjudication of the suit. It appears that the proposed amendment is necessary for determining the real question in controversy and even otherwise is not time barred and if allowed will avoid multiplicity of proceedings. Further, by the proposed amendment the respondent does not seek to withdraw any clear admission made by the party which confers a right on the other side. Furthermore, the proposed amendment will not

change the nature of the suit or the cause of action nor will result into setting up an entirely new case.

12. The petitioners have objected the proposed amendment mainly on the ground that the same has been sought at the belated stage and without exercise of due diligence as the respondent was fully aware about the date of execution of agreement to sell even at the time of filing of the suit and thus, the proposed amendment is hit by proviso to Order 6 Rule 17 CPC. Admittedly, the application for amendment was filed by respondent for rectification of typographical mistake with regard to date of agreement to sell which as per him was wrongly typed as 04.10.2009 in place of 04.11.2009. It is the plea of the respondent that he came to know about the said typographical mistake during the pendency of the suit and immediately, thereafter, he filed necessary application seeking amendment of the plaint. This Court is of the view that such type of clerical mistake can be corrected at any time before passing of the final judgment, it being necessary for determining the real controversy between the parties. Further the proposed amendment is not going to cause in justice or prejudice to the other side. Power to allow the amendment is wide and can be exercised at any stage of proceedings, if the same is required in the interest of justice. The purpose of allowing such like amendment is to minimize litigation and is required for effective and proper adjudication of subject matter in dispute.

13. The Hon'ble Apex Court in Civil Appeal No.5909 of 2022 ***Life Insurance of Corporation of India Vs. Sanjeev Builders Private Limited and another*** decided on 01.09.2022 has held that in dealing with a prayer for amendment of pleadings, the Court should avoid a hyper technical approach

and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

14. In view of the facts and settled position of law as described above, no ground is made out to interfere in the impugned order whereby the application filed by respondent for amendment of the plaint was allowed subject to costs.

15. Consequently, the revision petition is hereby dismissed being devoid of merits.

08.12.2023

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No