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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1696-2023 (O&M)

Date of decision: March 17, 2023

Sushma

....Petitioner

versus

Kanta Rani and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sandeep Lather, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Impugned herein is an order dated 01.03.2023 (Annexure P-7) passed by learned Civil Judge (Junior Division), Chandigarh in Civil Suit No.2381 of 2014 titled 'Sushma Vs. Kanta Rani and others', whereby, application under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short 'CPC') filed by plaintiff/petitioner for amendment of plaint *qua* date of documents, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for declaration by virtue of sale transaction which took place on basis of Agreement to sell, General Power of Attorney and Special Power of Attorney coupled with a Will dated 24.02.1995 executed by late Sh. Kapil Dev in favour of plaintiff. It is pleaded that 50% allotment rights of Booth No.170, Sector 19-C, Chandigarh (RBL-718) were sold to plaintiff/petitioner, who thus became its *de facto* owner and late Kapil Dev was left with no right, title or interest over the same. After the death of said Kapil Dev, plaintiff/petitioner inherited his 25% share in Booth No.170, Sector 19-C, Chandigarh on the basis of registered Will dated 20.02.1995.

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2.2 It is further pleaded that mutation dated 13.08.2012 in respect of 50% share of aforesaid Booth No.170 was obtained by defendants No.1 to 3 fraudulently and by misrepresentation and concealing of true facts is wrong, illegal, void and having no effect on the rights of plaintiff/ petitioner; for specific performance of agreement to sell dated 20.02.1995 executed between late Kapil Dev and plaintiff/petitioner. Suit is for mandatory injunction directing defendants No.1 to 3 to complete necessary formalities for transfer/sale of 50% share of said Booth in favour of plaintiff/petitioner pursuant to sale documents; and for permanent injunction restraining defendants No.1 to 3 from alienating, mortgaging or creating any third party charge or dealing with any affairs of 50% share of late Kapil Dev in any manner except with due consent of plaintiff.

2.2 Issues were framed on 20.04.2015 and 07.02.2017. Thereafter, case was fixed for plaintiff evidence and it was closed by Court order on 06.12.2017. Evidence of respondent/ defendants was closed on 17.11.2021.

2.3 Petitioner/plaintiff subsequently filed an application under Order VI Rule 17 of CPC for amendment of plaint on the ground that while preparing case for final arguments, it has come to the notice of petitioner that in head note and prayer clause of plaint, dates of documents i.e., Agreement to Sell, General Power of Attorney and Will are mentioned as '24.02.1995, 20.02.1995 and 20.02.1955' instead of '20.02.1995', and further in opening para of head note and sub prayer in sub para (1), there is mention of 'Special Power of Attorney', whereas there exists no such document as mentioned in para-4 and other parts of plaint and further in prayer of mandatory injunction para in head note and prayer in sub para (v), word 'on' is missing before date '20.02.1995'.

2.4 Vide impugned order dated 01.03.2023 (Annexure P-7), application of plaintiff was dismissed.

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3. Learned counsel for petitioner contends that plaintiff wants to rectify abovementioned errors being typographical in nature and is ready to compensate respondents due to these typographical mistakes.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. I have heard learned counsel for petitioner and perused the case file.

6. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner unless afforded an opportunity to file the amended plaint.

7. Provisions contained in Order VI Rule 17 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file amended plaint, subject to certain penalty as a deterrent. The Courts ought to be liberal in the matter of allowing amendment unless serious injustice or irreparable loss is caused to the other side. The Courts should not, therefore, be too harsh to disallow amendment of plaint. Moreover, cause of action remains the same and nature of suit would also not be changed if proposed amendment is allowed.

8. However, it is made clear that petitioner shall not be allowed to adduce any further evidence *qua* his proposed amendment being allowed since it is pleaded case in affirmative that amendment is merely technical in nature and arising out of an inadvertence at the time of drafting pleadings which escaped notice of plaintiff as well as learned counsel.

9. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/plaintiff for filing amended plaint, subject to costs of Rs.10,000/- payable to respondents. To that extent, impugned order is modified and the revision petition is allowed.

10. Disposed of, accordingly.

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11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No