

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

**DATE OF DECISION: 23.03.2023
(1) C.R NO. 1892 OF 2022 (O&M)**

Balwan Singh **...Petitioner**

Versus

Jaimal Singh and others **...Respondents**

AND

(2) C.R NO. 1910 OF 2022 (O&M)

Balwan Singh **...Petitioner**

Versus

Jagdish Singh and others **...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sudhir Aggarwal, Advocate,
For the petitioner (s).

None for the respondents, despite service.

ARUN MONGA, J. (ORAL)

Vide this common order/judgment, above-mentioned two revision petitions are being disposed of, since the facts are analogous and controversy and facts raised therein is common. For brevity, recitals are taken from CR-1892-2022.

2. For convenience, parties herein are addressed as per the recitals before learned trial Court.

3. Present revision petition herein is to set-aside impugned order dated 05.04.2022 (Annexure P-4) passed by learned Civil Judge (Junior

Division), Bawal, whereby application filed by petitioner-plaintiff under Order VI Rule 17 read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') for amendment of plaint, was dismissed.

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

2.1 Petitioner/plaintiff filed a suit for permanent injunction, *inter alia*, pleading that respondents had agreed to sell 48 Kanals 0 Marla situated within revenue estate of village Jaisinghpur-Khera, District Rewari vide agreement dated 29.08.2008. Sale deed was to be executed on or before 13.07.2009. Since Special Leave Petitions No.17655 to 17662 of 2018 were pending before the Apex Court, parties agreed to execute sale deed after final decision of litigation and executed receipt dated 11.09.2010. Upon coming to know that respondents are trying to sell the property in question, plaintiff filed suit for permanent injunction.

2.3 Petitioner filed an application under Order VI Rule 17 CPC (Annexure P-2) for amendment of plaint, *inter-alia*, for pleading that respondents vide sale deed 22.03.2022 sold some part of suit property to M/s Vasu Developers and hence, prayer was made to convert it into a suit for possession by way of specific performance and praying that purchaser i.e., M/s Vasu Developers may be impleaded as party to the suit.

3. Respondents filed reply (Annexure P-3) to application alleging that application is barred under Order 2 Rule 2 CPC; plaintiff failed to get the sale deed executed, as such, they sold the suit property so no cause of action has arisen.

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

5. Despite service, none appears on behalf of respondents. Service report reflects that respondents No.1(a), (b), (c) and 3 have been duly served.

However, respondent No.2 is reported to have died. It seems that there is no

serious opposition to the instant petition. Moreover, case is at very nascent stage and evidence is yet to be adduced.

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 amend the plaint.

7. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/plaintiff for amending the plaint. Impugned order is set aside and the revision petitions are allowed. Amended plaint be taken on record by learned trial Court and it shall proceed with the trial. Needless to say that the Court fee shall be paid by the petitioner as per his claim in the amended plaint.

8. Both the revision petitions stand disposed of accordingly.

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

MARCH 23, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No