

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3407-2023 (O&M)
Date of Decision:-04.08.2023

SUMER CHAND

... Petitioner(s)

Versus

JARNAILO DEVI AND OTHERS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Ashok Kumar Khubbar, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner for setting aside order dated 21.3.2023 (Annexure P-11) passed by the Court of Civil Judge (Junior Division), Jagadhri, whereby the application filed by respondent No.1 for amendment of the plaint has been allowed.
2. Brief facts of the case are that respondent No.1-Jarnailo Devi has filed suit for specific performance of an agreement to sell dated 14.8.2012 and for permanent injunction restraining the petitioner from alienating the suit property to any third person. The suit has been contested by the petitioner. During the pendency of the suit respondent No.1 filed an application for amendment of the plaint in order to seek alternative relief for recovery of Rs.9,30,000/- along with interest. The said

application was allowed by the learned trial Court vide order dated 21.3.2023 and being aggrieved the present revision petition has been filed by the petitioner.

3. The counsel for the petitioner submits that both the parties have already led their evidence and at this belated stage, the respondent No.1 has sought amendment of the plaint in order to claim alternative relief by way of recovery of Rs.9,30,000/-. The counsel for the petitioner further submits that the application for amendment of the plaint was filed by respondent No.1 just to delay the proceedings. That earlier also respondent No.1 moved an application for amendment of the plaint, but the same was declined by the learned trial Court vide order dated 4.1.2023 (Annexure P-7). The counsel for the petitioner further submits that the impugned order deserves to be set aside.
4. I have considered the submissions made by counsel for the petitioner.
5. The case of the respondent No.1 is that petitioner executed an agreement to sell dated 14.8.2012 with respondent No.1 for total consideration of Rs.9,30,000/- and the entire sale price was paid to the petitioner on the same very day and that the sale deed was to be executed by 5th April, 2016. That however the petitioner failed to execute the sale deed by the date fixed while the respondent No.1 always remained willing and ready to perform her part of the contract. Consequently respondent No.1 filed suit for specific performance for agreement to sell dated 14.8.2012. However at the time of filing the

suit the respondent No.1 had not sought alternative relief of recovery of Rs.9,30,000/- which she is stated to have paid to the petitioner at the time of execution of agreement to sell. Later on respondent No.1 filed an application for amendment of the plaint to seek aforesaid alternative relief of recovery of Rs.9,30,000/- along with interest.

6. Section 22 of Specific Relief Act, 1963 reads as follows:-

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1 [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provident that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

7. The aforesaid provision of law makes it clear that the proviso to Sub-Section 2 of Section 22 empowers the Court to allow such amendment

of the plaint at any stage of proceedings. So the Court has been vested with wide judicial discretion to allow the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of earnest money/sale consideration. In this context reference is made to the decision of Hon’ble Supreme Court in **Civil Appeal No.921 of 2022, Desh Raj vs. Rohtash Singh** decided on **14.12.2022**.

8. As the expression used in proviso to Sub-Section 2, Section 22 of Specific Relief Act, 1963 is “at any stage of proceedings”, such amendment cannot be refused on the ground that claim has become time barred. So the learned trial Court rightly allowed the application for amendment of plaint while placing reliance upon judgment of Hon’ble Supreme Court in **Manickm @ Thandapanni and Anr. vs. Vasantha, 2022 Live Law (SC) 395** and decision of this Court in **Satnam Singh vs. Amrik Singh and Ors. CR-3237-2022** decided on **9.9.2022**.
9. In the light of above discussion, the present revision petition is dismissed being devoid of merits.

04.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No