

283

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

**C.R NO. 2729 OF 2022 (O&M)
DATE OF DECISION: 18.04.2023**

**Gurpreet Singh and another
versus**

...Petitioners

Dalip Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. S. Sarwara, Advocate,
For the petitioners.

None for respondent No.3, despite service.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 31.05.2022 (Annexure P-4) passed by learned Civil Judge (Junior Division), Rajpura, whereby application filed by plaintiff/petitioners herein, under Order 6 Rule 17 read with Section 151 CPC seeking amendment of plaint, was dismissed. Present petition has been filed through special power of attorney constituted vide document dated 30.04.2018 (Annexure P-5).

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

2.1. Petitioner/plaintiffs filed a suit for possession by way of specific performance of the agreement to sell dated 04.05.2022 in respect of H/Plot No.7, Block C-1, Vikas Nagar, Tehsil Rajpura, District Rajpura, for getting sale deed of said house executed in favour of plaintiffs from defendant/respondent No.1 herein and further suit for permanent injunction restraining defendant, agent or representative from making any

addition or alteration in house in question and in alternate suit for recovery of Rs.40,00,000/-.

2.2. The house in question was transferred by defendant to one Jaswinder Kaur. Petitioners filed application under Order 1 Rule 10 CPC for impleading said Jaswinder Kaur and Dewan Housing Finance Corporation Limited as defendants No.2 and 3 respectively, which was allowed vide order dated 05.03.2019. Thereafter, all the defendants were proceeded *ex parte* as none appeared on their behalf. Case was not taken up for long time due to pandemic.

2.3 Plaintiff/petitioners filed application under Order 6 Rule 17 CPC for amendment of plaint mainly to challenge sale deed by defendant No.1 in favour of defendant No.2 which had been initially challenged. Said application was dismissed by learned Civil Judge (Junior Division), Rajpura. Hence, instant revision petition.

3. Heard.

4. Matter was earlier heard by a co-ordinate Bench presided over by Manjari Nehru Kaul, J. and following order was passed on 18.07.2022:

“ Petitioners are impugning the order dated 31.05.2022 passed by the Court below vide which an application under Order 6 Rule 17 CPC moved by the plaintiffs for amendment of plaint was dismissed.

Learned counsel for the petitioners inter alia contends that subsequent to the institution of the suit for possession in the year 2018 it came to the knowledge of the plaintiffs that defendant No.1 had transferred the house in question to her daughter -defendant No.2 by way of sale deed dated 31.03.2016. He submits that thus, he moved the application in question for the following proposed amendment:

- (i) *In the head note as well as prayer clause of the plaint in 4th line after word “Patiala” following words are liable to be inserted “measuring 256-2/3 sq.yards.”*
- (ii) *In the head note of the plaint in 6th line after word “defendant” following words are liable to be inserted “and suit for declaration to the effect that sale deed bearing Vasika No.5326 dated 31.03.2016 executed by defendant No.1 in favour of her daughter i.e., defendant No.2 is illegal, null and void and the same is liable to be set aside, as defendant No.1 has already entered into agreement to sell dated 04.05.2015 about the house in question with the plaintiffs” and in relief of injunction words “defendant” and her to be substituted with words “defendants” and “their”.*
- (iii) *After para 6, para 6-A is liable to be added – “That the plaintiffs have come to know that defendant No.1 to defeat the right of the plaintiffs, has illegally transferred the house in question to her daughter namely Jaswinder Kaur w/o Gurinder Pal Singh r/o House No.210, Guru Arjan Dev Colony, Rajpura District Rajpura (Defendant No.2) through sale deed bearing Vasika No.5326 dated 31.03.2016 which is illegal, null and void and liable to be set aside as defendant No.1 has no right to sell the house in question to defendant No.2 when defendant No.1 has already executed an agreement to sell dated 04.05.2015 regarding the house in question in favour of the plaintiffs. The defendant No.2 Jaswinder Kaur alongwith her husband namely Gurwinder Pal Singh to defeat the right of the plaintiffs obtained loan on the house in question from defendant No.3-Dewan Housing Finance Ltd. The aforesaid Jaswinder Kaur and Dewan Housing Finance Ltd. Have already been impleaded as parties i.e., defendants No.2 and 3 in the above noted case.”*

Learned counsel submits that the trial is still at the nascent stage as only issues stand framed and still further, it has been submitted that the defendants have been proceeded against ex parte by the trial Court.

Notice of motion for 26.09.2022.

Meanwhile, trial Court shall adjourn the case beyond the date fixed before this Court.”

4. Having perused the above and after hearing learned counsel for the petitioner, I am of the view that requirement of service upon remaining respondents No.1 and 2 can be dispensed with, at this stage, since no prejudice will be caused to them, given the nature of order being passed.

5. Considering the submissions of learned counsel recorded in the order *ibid* and I am of the view that same merit acceptance.

6. In the premise, impugned order dated 31.05.2022 is set-aside. Revision petition is allowed, subject to payment of costs of Rs.10,000/- to defendant/respondents herein, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. Petitioner is permitted to amend the plaint within a period of two months from the receipt of certified copy of this order.

APRIL 18, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No