

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

CR-1907-2017

Reserved on 15.11.2023

Date of decision: 08.12.2023

Mandeep Kumar and another

...Petitioners

Versus

Surinder Ram and another

...Respondents

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 No.1

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 22.02.2017 (Annexure P-11) passed by the Court of Civil Judge (Senior Division), Ludhiana, whereby an application filed by respondent No.1/plaintiff under Order 6 Rule 17 CPC for amendment of the plaint has been allowed in civil suit titled Surinder Ram Vs. Jaswant Kaur @ Kulwant Kaur and others.

2. The brief facts of the case of respondent No.1/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. In month of January, 2010 the respondent/plaintiff was in need of money and petitioner No.2 and respondent No.2 came to know about the same and then they made false representation to the respondent No.1 to arrange bank loan for him and on pretext of providing him bank loan the said

petitioners took signatures of respondent No.1 on some blank papers including stamp papers but no such loan was ever granted to respondent No.1 and on this he requested them to return his blank signed documents, on which they threatened to misuse the said documents against him. That during the pendency of suit, petitioners and respondent No.2, took forcible possession of the suit property. Hence, the suit for mandatory injunction seeking possession of the suit property.

3. The suit was contested by the petitioners and respondent No.2 and they filed written statements 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 22.02.2017 subject to cost of Rs.2,000/-.

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 No.1 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 respondent No.1 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 No.1/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 No.1/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 clerical 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 typographical mistake came to notice of the respondent No.1, 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 No.1 propounded one agreement to sell dated 04.10.2009 executed by Bhajan Kaur in favour of respondent No.1 with regard to suit property. The respondent No.1 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 No.1 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 No.1 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 No.1 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 No.1 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. 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 No.1 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