

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-137-2024 (O&M)
Date of Decision : 11.01.2024

Tankaur and othersPetitioners

VERSUS

Satish Chand and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Aashish Aggarwal, Sr. Advocate with
Mr. Vishal Pundir, Advocate for the petitioners.

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SUDEEPTI SHARMA, J. (Oral)

1. The petitioners in the present revision petition filed under Article 227 of the Constitution of India has challenged the impugned order dated 04.11.2023 (Annexure P-5) passed by the Civil Judge (Junior Division) Rewari, to the extent by which the application (Annexure P-4) filed by the petitioners for amendment of the plaint has been disallowed.
2. Learned Senior counsel for the petitioners contends that as per the agreement to sell dated 03.04.2013, respondent No.1 agreed to sell the land comprised in Khewat No. 1512, Khatoni No. 1770, Rect. No. 109, Killa Nos. 4/2/2 (1-8), 5/1/1 (2-12), 7/1 (4-0), 14/2 (4- 0), 6/2 (4-8), 15 (8-0), 17/1 (4-0), 23/2 (1-13), 24 (7-7), 25 (7- 7), Rect. No. 110, Killa No. 11 (8-0), 20/1 (6-0), Rect. No. 120, Killa No. 4/1 (2-0), Plots 13, measuring 60 Kanal 15 Marla ½ share of which comes to 13 Kanals 8 Marlas and land comprised in Khewat No. 1514, Khatoni No. 1772, Rect. No. 109, Killa No. 27 (1-17) i.e. 1/9 share of 1 Kanal 17 Marla which comes to 4 Marla i.e. total land measuring 30 Kanal 12 Marla situated in Siwni, Village Rewari,

Tehsil and District Rewari as per Jamabandi for the year 2003-04 and Mutation No. 18269, sanctioned on 18.01.2007. Out of this share, the petitioners agreed to purchase the land comprised in Khewat No. 1512, Khatoni No. 1770, Rect. No. 109, Killa No. 14/2 (4-0), 15 (8-0), 17/1 (4-0), 25 (7-7), Rect. No. 110, Killa No. 11 Min 95-0), measuring 28 Kanal 7 Marla and Rect. No. 109, Killa Nos. 27 (1-17), measuring 1 Kanal 17 Marla i.e. 1/9 share which comes to 4 Marla, i.e. total land measuring 28 Kanal 11 Marla (3 Acre 4 Kanal 11 Marla alongwith Manahi) situated in Siwna, Village Rewari, Tehsil and District Rewari for a sale consideration of Rs. 2,15,00,000/- (Rupees Two Crore Fifteen Lacs) per acre. Annexure P-2 is the supplementary Agreement to Sell vide which it was agreed that the land measuring 30 kanal 12 marla situated in Siwana, Village Rewari, Tehsil and District Rewari would be partitioned and his share would be separated. Learned Senior counsel further contends that since the area was partitioned and area which was previously agreed to be sold to the petitioners by way of agreement to sell was challenged in the partition proceedings and since that area was not cultivable, therefore, he filed a suit for specific performance. As per agreement to sell, during the pendency of the suit, the area which was partitioned became cultivable, therefore, the petitioners had no objection if the area was to be sold as per partition. In view of the same, the petitioners moved an application (Annexure P-4) before the Civil Judge, Senior Division, Rewari, for permitting to give up the claim against defendant Nos. 2 to 4 and to amend the relief clause of the plaint

accordingly. The amendment sought for by the petitioner is reproduced as under:-

“(A) Name of the defendants No.2 to 4 is required to be deleted from the title of the suit.

“(B) Para No.19(a) of the plaint is required to be substituted as under:-

(b-1) That a decree of possession by way of specific performance of agreements to sell dated 03-04-2013, 26,02,2014 and tehrir dated 27-07-2014 duly executed by defendant No. 1 regarding 28 Kanal 11 Marla land situated at Rewari, Tehsil & Distt. Rewari regarding the above-said land of Khewat No. 1512, may kindly be passed in favour of plaintiffs and performa defendants and against the contesting, defendant No.1 pertaining to 28 Kanal 7 Marla out of the land allotted to him as per mutation No.27400 of mutual partition and of 4 Marla out of Killa No.27(1-17), to the extent of 1/9 share and if the defendant No.1 fails to do so in that eventuality this Hon'ble Court may kindly be pleased to direct the needful to be done by appointment of Local Commission so that clear & marketable title is transferred in favour of plaintiffs and performa defendants.”

3. Learned Senior counsel further contends that vide the impugned order, his prayer ‘A’ has been allowed whereas his prayer regarding amendment of the area has been disallowed.

4. I have heard learned counsel for the petitioners and perused the record of this case with the able assistance of learned senior counsel.
5. Without going into the merits of the present case, this Court is of the view that the Civil Judge (Sr. Division), Rewari, has allowed one part of the amendment i.e. Part 'A' and disallowed Part 'B' of the amendment without appreciating the actual and factual position as explained in the application (Annexure P-4) filed by the petitioners and as mentioned in the suit for specific performance of agreement to sell. A perusal of the impugned order shows that the application was not contested and objected to by the defendants-respondents, still, it has been partly allowed and the main portion of the amendment has been disallowed, which rather should have been allowed to avoid multiplicity of litigation between the parties.
6. In view of the above, the present petition is allowed. Impugned order dated 04.11.2023 (Annexure P-5) is hereby set aside and the application (Annexure P-4) of the petitioners dated 11.07.2023 is allowed. Learned Additional District Judge, Rewari, is directed to proceed further with the amended plaint in accordance with law.
7. Pending applications, if any, also stand disposed off.

January 11, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No