



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

SAO-25-2017 (O&M)

Date of decision: 28.05.2024

Dayapal and another

....Appellants

Versus

Dalip Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Mani Ram Verma, Advocate for the appellants

Mr.Sudhanshu Makkar, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this case, the First Appellate Court has given precedence to the procedural formalities over substantive law, which is not the correct approach.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Originally, Sh.Daya Pal filed a suit for the specific performance of the agreement to sell dated 05.10.2007. During the pendency of the suit, wife of Sh.Daya Pal namely Smt.Meena Rani filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for her impleadment in the suit as plaintiff on the ground that by a subsequent agreement dated 16.09.2008, the defendant agreed to sell the property in her favour, which was allowed by the trial court vide order dated 20.05.2010. The plaintiff was permitted to file an amended plaint, which was filed. The defendant was



granted an opportunity to file the written statement to the amended plaint, which was also filed. Thereafter, the plaintiff filed replication and after settling the issues, the court permitted the parties to lead evidence. Ultimately, the suit filed by the plaintiffs was decreed. The defendant filed the first appeal, which has been allowed on the ground that plaintiff no.2 was added as plaintiff but the trial court had not settled any terms on which the co-plaintiff is added. The court further held that the amended plaint has been filed without filing any application for permission to amend the plaint. The First Appellate Court relied upon the judgment passed by the Supreme Court in **Gurdial Singh vs. Raj Kumar Aneja 2002 (2) SCC 445**. Thus, the First Appellate Court has ordered that the amended plaint shall be omitted from the record and the trial court will proceed with the matter afresh on the basis of the unamended plaint

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook

5. On the one hand, the learned counsel representing the appellants submits that once an application under Order 1 Rule 10 CPC was allowed, some consequential amendments were inevitable. He submits that the First Appellate Court has erred in passing the impugned order. He relies upon the judgment passed by the Supreme Court in **Ramprasad Dagaduram vs. Vijay Kumar Motilal Hirakhanwala and others 1967 AIR(SC)278**.



6. On the other hand, the learned counsel representing the respondent submits that a serious prejudice has been caused to the respondents.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. In fact, the suit property remains the same. In the beginning the defendant entered into an agreement to sell with plaintiff no.1, which was subsequently superseded by another agreement executed by defendant no.1 in favour of the wife of plaintiff no.1 namely Smt.Meena Rani. As per Section 62 of the Indian Contract Act, 1872 an alteration was made in the original contract. Plaintiff no.1 does not dispute the correctness of the subsequent agreement executed by defendant no.1 in favour of plaintiff no.2 on 16.09.2008. In such circumstances, the consequential amendment in the plaint was inevitable. It is for this reason that the defendant was given an opportunity to file the written statement in the amended plaint, which was duly filed. The First Appellate Court has therefore erred in observing that the trial court has not settled any term on which plaintiff no.2 was added. Moreover, the rules of procedure are handmaids of justice. The First Appellate Court has also erred in relying upon the judgment passed in **Gurdial Singh's case (supra)**. In the aforesaid case, the Supreme Court held that once an application for permission to amend the plaint has been allowed, the respondent shall be granted an opportunity to file reply to the amended portion of the plaint. However, if the respondent wants to further amend the written statement or reply, then he has to file a separate application



for amendment of the reply. It is evident that the judgment passed in **Gurdial Singh’s case (supra)** is not applicable to the facts of the present case.

9. Though, there is no procedural irregularity, however, the defendant claims that there is a procedural defect. In such circumstances, the interest of justice would be met if the defendant is granted one more opportunity to file any supplementary written statement and another opportunity to lead further evidence, if any. However, it would not result in de novo trial if the plaintiff prays he may be granted an opportunity to file replication and lead counter evidence.

10. Keeping in view the aforesaid facts, the judgment of the First Appellate Court is set aside.

11. The second appeal against order stands allowed. The parties through their learned counsel are directed to appear before the First Appellate Court on 19.07.2024.

12. All the pending miscellaneous applications, if any, are also disposed of.

28.05.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE