

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.120

Case No. : CR No.6694 of 2023

Date of Decision : February 26, 2024

Chiman Singh and another Petitioners
vs.

Karnail Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. P. P. S. Duggall, Advocate
for the petitioners.

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GURBIR SINGH, J. :

1. Challenge in this petition is to the order dated 14.09.2023 (Annexure P-5), passed by learned Additional Civil Judge (Senior Division), Guruharshai (for short – Trial Court), whereby application filed by the petitioners/defendants under Order 6 Rule 17 CPC, for amendment of written statement, has been dismissed.

2. Brief facts, as culled out from the petition, are that respondent no.1 Karnail Singh filed suit for specific performance of the agreement to sell dated 31.03.2017, executed by defendant no.1 in favour of plaintiff with regard to suit land and for declaration that sale deeds bearing no.66 of 19.04.2017 and no.67 of 19.04.2017 in favour of defendants no.2 and 3 are illegal, null and void and the same were without consideration being result of fraud. In the alternative, suit for recovery of Rs.14,50,000/- on account of payment of earnest money along with interest @ 24% per annum.

3. Defendant no.1 contested the suit on the ground that his thumb

impressions were taken on blank papers and same were converted into agreement to sell dated 31.03.2017. Plaintiff forcibly took possession of the suit land.

4. Defendants no.2 and 3 filed separate written statement on the ground that they are bona fide purchasers for valuable consideration. They purchased the suit land from defendant no.1 on the basis of validly executed sale deeds.

5. Defendants no.2 and 3 filed appeal. The learned Appellate Authority set aside the judgment and matter was remanded to the learned Lower Court, at the stage of arguments. The application was moved by the plaintiff for summoning of Ajmer Singh, Proprietor of Money Commission Agency. It was directed that if application is allowed, then opportunity to rebut the evidence be granted to the plaintiff and thereafter, after hearing arguments, the case be decided afresh.

6. Learned counsel for the petitioners has argued that after remand of the case, the petitioners have filed application under Order 6 Rule 17 CPC that in the written statement, the following line, after the words 'valuable consideration' may be added :-

***“Without any notice and knowledge of alleged
agreement to sell in question.”***

7. In the application, it is specifically written that the applicant shall not lead any further evidence, if the proposed amendment is allowed. It is further submitted that for amendment of written statement, the Court are quite liberal as has been held by Hon'ble Apex Court in **Baldev Singh and others vs. Manohar Singh and others** reported as **2006(3) RCR (Civil)**

844 and by this Court in **Rao Shailender Singh vs. M/s Raitani Buildcon Pvt. Ltd.** reported as **Law Finder Doc Id # 1478596, Saroj (through her GPA Sunil Kumar @ Sunil Antil) vs. Joginder Singh and another** reported as **2020(4) RCR (Civil) 118** and **Sagar Singh Slathia vs. Surinder Pal Singh** reported as **2009(3) RCR(Civil) 37**.

8. I have heard submissions of learned counsel for the petitioners and perused the case file.

9. In the case in hand, the learned Appellate Court allowed the appeal filed by the petitioners observing that if the application moved by the applicants for examination of Ajmer Singh – Proprietor of Money Commission Agency of Guruharsahai is allowed, then opportunity be given to the plaintiff to rebut the evidence.

10. No doubt, the law of amendment regarding written statement is very liberal. The petitioners want to insert the words - ***“Without any notice and knowledge of alleged agreement to sell in question.”*** In the application, it is specifically written that the applicant shall not lead any further evidence, if the proposed amendment is allowed. If there is any pleading and same remains unproved on the file, then same cannot be read for the purpose of just decision of the case. The rule is ‘plead and prove’. The question whether sale deed was executed without notice of alleged agreement to sell, is a question of fact, for which evidence is required. The plaintiff has sought amendment without seeking to lead evidence to prove the same. Any amendment which cannot be read for the decision of the case, cannot be allowed. So, no purpose would be served by the proposed amendment.

11. In case Baldev Singh (*supra*), it is held that the Court can allow the amendment if it is satisfied that despite due diligence, a party could not raise the matter before commencement of trial. In the case in hand, the case is remanded at the stage of arguments but to decide application for summoning of the witnesses which remained undecided before the Trial Court. In case Rao Shailender Singh (*supra*), the issue was with regard to taking plea of challenge to the notice at the belated stage. In case of Saroj (*supra*), the suit was filed for mandatory injunction to give direction to execute sale deed but the real intention was to seek specific performance and only head note and prayer clause were to be amended. In the judgment in the case of Sagar Singh Slathia (*supra*), the amendment sought was with regard to property which was actually intended to be sold. So, the authorities cited by learned counsel for the petitioners are of no help to him.
12. In view of what has been discussed above, I do not find any merit in the present revision petition, which is accordingly dismissed.
13. Pending applications, if any, shall stand disposed of along with this judgment.

February 26, 2024
monika

(GURBIR SINGH)
JUDGE

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