

**In the High Court of Punjab and Haryana, at Chandigarh****Civil Revision No. 1231 of 2022 (O&M)****Date of Decision: 13.02.2025**

Balram Sharma

... Petitioner(s)

Versus

Simmi

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Amit Kumar Saini, Advocate
for the petitioner(s).

Mr. Abhay Gupta and Mr. Rohit Singla, Advocates
for the respondent.

Anil Kshetarpal, J.**I. Factual Background**

1. The petitioner herein is the defendant in a plaintiff's suit for recovery of ₹6,33,125/- which includes the principal amount of ₹5,00,000/-.

2. Balram Sharma, the petitioner, executed an agreement to sell on 21.04.2011 with respect to plot No. 4 in favour of respondent-Smt. Simmi on receipt of ₹5,00,000/- as earnest money. Subsequently, a suit for recovery was filed alleging that the aforesaid plot is located in a colony which is not regularized due to non-payment of necessary charges. Thus, a suit was filed for the recovery of amount which was contested by the defendant. During the pendency of the suit, the plaintiff has filed an application for permission to amend the plaint by alleging that the original owner of the property in question, namely Shamsheer Singh son of Phumman Singh, filed a Civil Suit

property agreed to be sold by the defendant to the plaintiff. The defendant's wife filed a written statement reflecting that the aforesaid plot is in possession of Sukhvir Kaur who has constructed her house. The Trial Court allowed the application which is challenged in this revision petition.

II. Submissions put forth by the learned counsel representing the parties

3. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioner has filed the synopsis while making the following submissions:-

- “(1) In the civil suit, the issues have been framed and seven witnesses stand examined.*
- (2) The Trial Court has not recorded a finding with regard to 'Due Diligence" of Plaintiff/Respondent per proviso of Order 6, Rule 17 CPC.*
- (3) No observation as to how and why the Amendment is necessary to decide the real dispute between the parties.*
- (4) The amendment in question will change the nature of Suit as the present Suit is only for Recovery on the basis of Agreement to sell.*
- (5) The Respondent/Plaintiff failed to honour the terms of the Agreement to sell therefore, the scope of inquiry in the suit is limited.*
- (6) The Ld. Trial Court has cited the judgments in mechanical manner, which are either prior to Amendment regarding proviso to Order 6, Rule 17 CPC or are totally*

irrelevant on different facts and issue in question, therefore, not applicable to present case.”

5. Per contra, the learned counsel representing the respondent submits that the Trial Court has exercised its discretion as the amendment goes to the root of the matter.

III. Analysis and Discussion

6. This Court has considered the submissions of the learned counsel representing the parties.

7. There is no absolute prohibition in permitting the amendment of the plaint even if the trial of the suit has commenced, if the Court finds it necessary for proper adjudication of the case. Proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) permits amendment of the pleadings after the commencement of trial if the Court comes to a conclusion that despite due diligence, the party was previously unable to plead the issue. In this case, the plaintiff wishes to bring on record the litigation pending with regard to the suit filed at the behest of the original owner Shamsher Singh in which the petitioner’s wife has filed a written statement admitting that the plot in question is in possession of Sukhvir Kaur who has constructed a house thereupon. Recently, the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another*** 2022 SCC online SC 1128 has held that the amendment of the pleadings should be allowed if it is necessary for proper adjudication of the case.

8. The second submission of the learned counsel representing the petitioner is also answered in view of the observations made above.

9. With regard to the third submission, it would be noticed that even if the Trial Court has failed to make an observation, however, in the facts of the case, the amendment is necessary to know as to whether the plaintiff defaulted in honouring the agreement or it was due to the fault of the defendant.

10. The fourth submission has no substance because before passing of a decree in the recovery suit, the Court is required to find as to who was at fault.

11. Adjudication of the fifth submission can only be made if the parties close their evidence. The Trial Court will decide the issue upon appraisal of evidence.

12. With respect to the sixth submission, it would be noticed that the plea sought to be taken by way of amendment is necessary for proper adjudication of the case.

IV. Decision

13. Keeping in view the aforesaid facts, no ground is made out to interfere with the impugned order. Hence, the present revision petition is dismissed. The Trial Court is directed to decide the suit uninfluenced by the observations made in the impugned order or by this Court.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

February 13, 2025
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No