



CR-2093-2025

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(118)

CR-2093-2025

Date of decision: - 04.04.2025

Harpal Singh

....Petitioner

Versus

Sahib Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Amit Arora, Advocate
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present civil revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 25.02.2025 (Annexure P-5) passed by the Additional Civil Judge (Sr. Division), Khadur Sahib, District Tarn Taran, vide which the application filed by the petitioner/defendant No.2 under Order 6 Rule 17 CPC for amendment of written statement has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner/defendant No.2 in his written statement has stated that he is the owner of land measuring 17 kanal 4 marlas by virtue of a registered sale deed dated 27.01.2021, which was for a consideration of Rs.28,47,000/-. It is further submitted that by virtue of the application for amendment under Order 6 Rule 17 CPC read with Section 151 CPC,

the petitioner wanted to take a plea of execution of an agreement to sell dated 22.08.2019 in his favour with respect to land measuring 14 kanals i.e. prior to the execution of the agreement to sell dated 04.11.2019, which as per the case of the plaintiff was executed between the plaintiff and defendant No.1 and on the basis of which he had filed a suit for specific performance. It was further stated that a second agreement was also entered into on 12.10.2020 which was with respect to the land measuring 17 kanals 04 marlas as initially the mutation with respect to land above 14 kanals had not been entered into. It is submitted the said amendment is necessary for the proper adjudication of the case and the application for amendment should have been allowed and the impugned order vide which the application has been dismissed is illegal and deserves to be set aside.

3. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the impugned order dated 25.02.2025 is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

5. It is not in dispute that respondent No.1-plaintiff had filed a suit for possession by way of specific performance of the registered agreement to sell dated 04.11.2019 with respect to land measuring 8 kanal out of total land measuring 174 kanal 6 marlas. The said suit was filed on 11.11.2021. A written statement was filed by the present petitioner/defendant No.2, in which, the plea was taken that the petitioner

was owner of the suit property by virtue of a registered sale deed dated 27.01.2021, which was executed by defendant No.1 in his favour. No plea with respect to any agreement, much less prior to the agreement propounded by the plaintiff, was raised in the written statement. The issues were framed on 04.03.2023 and the examination-in-chief of four witnesses was also tendered and it is thereafter that the present application under Order 6 Rule 17 CPC was filed. In the said application, the reason given for omission of the said facts, which were admittedly known to the petitioner, was that of “inadvertence”. The trial Court vide the impugned order rejected the application under Order 6 Rule 17 CPC by observing that the original written statement was filed on 16.07.2022 and the plaintiff had led his substantial evidence and the present application was filed on 10.09.2024 after a period of more than two years. It was further observed that no explanation had been offered as to why the averments with respect to the alleged agreements were not mentioned in the original written statement. Reliance was placed upon proviso to Order VI Rule 17 CPC and also various judgments of the Co-ordinate Bench of this Court to the effect that no amendment could be allowed once the trial had commenced unless the test of due diligence was complied with, which is not done in the present case.

6. The fact that the application for amendment was filed after the trial had commenced is not in dispute, inasmuch as, the same was filed after the issues were framed and even after the examination-in-chief of some of the plaintiff witnesses had already been tendered.

7. It could not be disputed that the alleged two agreements of which reference has been made in the application under Order 6 Rule 17 CPC were both dated prior to the date when the original written statement was filed. The proviso to Order 6 Rule 17 CPC specifically stipulates that no application for amendment shall be allowed after the trial has commenced unless the Court comes to a conclusion that despite due diligence, the party could not have raised the matter before the commencement of trial. The primary reason given in the application for amendment was that of “inadvertence”. The said plea is mutually destructive to the term “due diligence”. Thus, the amendment sought is hit by the proviso of Order 6 Rule 17 CPC.

8. Keeping in view the above-said facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

April 04, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes