IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-2330-2018 (O&M)
Date of decision: 04.05.2026

Aman Kumar

...Petitioner(s)

Vs.

Atul Chikrasal & Ors.

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Liaqat Ali, Advocate
for the petitioner.

Mr. Ivan Singh Khosa, Advocate
Mr. Aarjav Jain, Advocate
for the respondents.

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NIDHI GUPTA, J.

Present Revision Petition has been filed by the plaintiff laying challenge to the order dated 12.08.2016 passed by learned Civil Judge (Junior Division), Ludhiana whereby application filed by the petitioner under Order 6 Rule 17 CPC for amendment of plaint, has been dismissed.

2. Brief facts of the case in chronological order are as under:-

22.06.2013: The plaintiff/petitioner had filed Civil Suit dated 22.06.2013 (Annexure P1) for permanent injunction.

09.12.2013: The petitioner moved the instant application under Order 6 Rule 17 and Section 151 CPC (Annexure P2) on 09.12.2013, for amendment of plaint.

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18.12.2013: The defendants had filed reply dated 18.12.2013 (Annexure P3) to the above-said application.

12.08.2016: Vide impugned order dated 12.08.2016, the said application of the petitioner has been dismissed.

3. Learned counsel for the petitioner inter alia submits that trial in the present case was yet to commence as issues have not yet been framed. As such, application of the petitioner could not have been dismissed. It is further submitted that the learned trial Court failed to appreciate that the amendment sought by the petitioner is necessary to avoid multiplicity of litigation. However, the impugned order has been passed and application of the petitioner has been rejected without assigning any reason. Learned counsel argues that the case law in this regard is very clear inasmuch as the liberal view is required to be taken. Learned counsel further argues that admittedly, the earnest money has been received by Yashpal predecessor-in-interest of the respondents/defendants herein. The said acknowledgement is also mentioned in the receipt executed by said Yashpal in favour of the petitioner. As such, the petitioner is very much entitled to seek specific performance against the respondents, and the said relief could not have been denied to the petitioner. It is accordingly prayed that the impugned order be set aside.

4. In support, learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in **Rajesh Kumar Aggarwal v. K.K. Modi, (SC) : Law Finder Doc ID # 120400,** wherein it is held that:-

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"It is mandatory on court to allow all amendments which are necessary for the purpose of determining the real questions in controversy between the parties."

5. Per contra, learned counsel for the respondents/defendants vehemently opposes the submissions of the petitioner and submits that initially Suit had been filed by the petitioner for permanent injunction. Vide the impugned amendment, the petitioner is seeking to amend the Suit to add relief of possession by way of specific performance. It is submitted that therefore, the learned Civil Court has rightly held in the impugned order that the same would change the nature of the Suit. Accordingly, the impugned order suffers from no error and present Petition deserves to be dismissed.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel for the parties and perused the case file in detail. I find merit in the submissions of the respondents.

8. The petitioner has filed civil suit for permanent injunction restraining the respondent/defendant from alienating the suit property. Vide the application (Annexure P2), the petitioner is seeking to amend the Civil Suit by adding relief of possession by way of specific performance of a Receipt dated 06.03.2013 allegedly executed by Yashpal in favour of the petitioner to acknowledge sale of suit property to the petitioner.

9. First and foremost, the said amendment amounts to change in nature of Suit; which is not permissible as per law. A suit filed for permanent injunction cannot be amended to permit relief of possession by way of specific

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performance; as that would substantially alter the nature of the suit. In this regard, reference is made to judgment of Hon'ble Supreme Court in **Basavaraj v. Indira (SC) : Law Finder Doc ID # 2510571,** wherein it is held as follows:-

> *"Amendment of pleadings - Initially, the suit was filed for partition and separate possession - By way of amendment, relief of declaration of the compromise decree being is null and void was also sought - The same would certainly change the nature of the suit, which may be impermissible.*
>
> *XXX XXX XXX*
>
> *Amendment of pleadings - By way of amendment, relief of declaration of the compromise decree being is null and void also sought - Limitation to challenge the decree already expired - Amendment can not be allowed.*
>
> *A. Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of pleadings - Initially, the suit was filed for partition and separate possession - By way of amendment, relief of declaration of the compromise decree being is null and void was also sought - The same would certainly change the nature of the suit, which may be impermissible.*
>
> *XXX XXX XXX*
>
> *11. This Court in **Revajeetu's case (supra)** enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.*

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12. If the amendment is allowed in the case in hand, certainly prejudice will be caused to the appellant. This is one of the important factors to be seen at the time of consideration of any application for amendment of pleadings. Any right accrued to the opposite party cannot be taken away on account of delay in filing the application.

12.1 In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly."

10. Furthermore, it was the pleaded case of the petitioner that Yashpal predecessor-in-interest of the defendants had agreed to sell the suit property to the petitioner which is evident from the Receipt dated 06.03.2013. The petitioner is thus, seeking the said relief of specific performance on the strength of a Receipt dated 06.03.2013. It is admitted by learned counsel for the petitioner that vide the said amendment, the petitioner is not seeking

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specific performance of any Agreement executed by Yashpal in favour of the petitioner; but is seeking specific performance of the Receipt dated 06.03.2013. Even the same is not permissible as per law; as held by the Hon'ble Supreme Court in **Satish Kumar v. Karan Singh (SC) : Law Finder Doc ID # 736326,** as follows: -

> *"6. During the pendency of the suit in the trial court the original defendant who was an old person died and his legal representative was substituted. The original defendant as also the legal representative contested the suit denying and disputing the alleged receipt-cum-agreement and stated that no decree for specific performance can be passed. The trial court held that the receipt-cum-agreement is a legal and valid agreement to sell and shall be enforced by passing a decree for specific performance.*
>
> *The High Court on the basis of evidence adduced by the parties affirmed the finding recorded by the trial court.*
>
> *7. Prima facie, we are of the view that both the trial court and the High Court have completely failed to consider the provisions of Specific Relief Act and the principles laid down by this Court in catena of decisions as to the requirement of law for passing a decree for specific performance.*
>
> *8. It is well settled that the jurisdiction to order specific performance of contract is based on the existence of a valid and enforceable contract. Where a valid and enforceable contract has not been made, the Court will not make a contract for them. Specific performance will not be ordered if the contract itself suffers from some defect which makes the contract invalid or*

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unenforceable. The discretion of the Court will not be there even though the contract is otherwise valid and enforceable.

XXX XXX XXX

12. On the basis of these admitted facts the Trial Court erroneously held that the receipt-cum-agreement is an enforceable contract and on that finding decreed the suit which was affirmed by the High Court."

11. Reliance may also be placed upon judgment of Delhi High Court in **Ganpati Infrabuild Pvt. Ltd. v. Sudarshana Duggal, (Delhi) : Law Finder Doc ID # 986009,** wherein it is held as follows:-

"A receipt relating to an immovable property does not qualify as an "agreement" unless it is signed by both parties and contains all essential terms, including obligations, rights, timelines, and consequences for non-performance.

A. Civil Procedure Code, 1908 Order 7, Rule 11 Rejection of plaint - Specific performance of a receipt - Held, a receipt signed only by one party, lacking essential attributes of an agreement such as mutual obligations, timelines, and terms of development, cannot be specifically enforced - Such a document, being merely an acknowledgment of payment, does not constitute a binding agreement under law.

B. Contract Act, 1872 Section 10 Specific performance of contracts - Essential elements - A document must indicate consensus ad idem, mutual obligations, and certainty of terms to be considered an enforceable agreement - Mere nomenclature of a document as a "receipt" or otherwise is immaterial; the substance and contents of the document determine its nature."

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12. Learned counsel for the petitioner is unable to dispute or controvert the aforesaid factual and legal position.

13. In view of the above, present Revision Petition stands **dismissed.**

14. Pending application(s) if any also stand(s) disposed of.

(Nidhi Gupta)
Judge

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Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**

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