

**CR No.1871 of 2025****1****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Civil Revision No.1871 of 2025
Date of decision: April 27th, 2026

Chaman Lal

.....Petitioner

Versus

Jogindro and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHLPresent: Mr. Saurabh Gupta, Advocate
for the petitioner.Mr. Abhay K. Sharma, Advocate
for the respondents.**VIKAS BAHL, J. (ORAL)****CHALLENGE IN THE PRESENT PETITION:**

1. This is a civil revision petition under Article 227 of the Constitution of India for setting aside the impugned order dated 19.11.2024 passed by Civil Judge (Senior Division), Phagwara, whereby the application under Order I Rule 10 CPC file by the petitioner has been dismissed and also order dated 03.12.2024, whereby the application under Order VI Rule 17 CPC filed by the petitioner has been stated to be rendered infructuous in view of order dated 19.11.2024.

ARGUMENTS ON BEHALF OF THE PETITIONER:

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for possession by way of specific performance on 18.04.2019 against Jogindro and Paramjeet Kaur. It is submitted that it has come on record that vide judgment dated 13.02.2020, one Gurvinder Kumar who is son of Balvir @ Balvir Ram and brother of Paramjit Kaur has a



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decree with respect to the property in question in his favour and by virtue of the said judgment, the defendants in the present case are no longer the owners and it is the said Gurvinder Kumar who has become the owner of the suit property. It is submitted that the petitioner was not a party to the said judgment and in view of the said fact, it became necessary for the petitioner to seek impleadment of the said Gurvinder Kumar as defendant in the present suit and also to carry out the necessary amendment, which has been declined vide the impugned orders. It is also submitted that since it is the suit of the plaintiff/present petitioner for possession by way of specific performance, delay in the proceedings would primarily cause prejudice to the petitioner. It is further submitted that a perusal of the judgment dated 13.02.2020 would show that there was collusion between the defendants in the present case who were defendant No.2 and defendant No.3 in the suit filed by Gurvinder Kumar, inasmuch as the said defendants did not lead any evidence and did not even examine any witness with respect to the cancellation of the Will which was alleged in favour of Gurvinder Kumar son of Balvir Ram, so as to purposely suffer a decree in favour of said Gurvinder Kumar for creating obstacles in the suit for specific performance filed by the petitioner. It is further submitted that as per his instructions, no appeal has been filed against the judgment dated 13.02.2020, which further clearly shows that there is apparent collusion between the defendants and Gurvinder Kumar.

3. Learned counsel for the petitioner has further submitted that immediately after the written statement was filed on 16.08.2021, the petitioner moved two applications, one was an application under Order VI



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Rule 17 CPC for amendment in order to make the necessary prayers to challenge the said judgment and decree on the ground of apparent collusion and the other application which was filed was for impleading the said Gurvinder Kumar who was the plaintiff in the judgment decree dated 13.02.2020 along with Gejo through her LRs who was defendant No.1 in the said suit of Gurvinder Kumar. It is submitted that the trial Court has vide order dated 19.11.2024 dismissed the application under Order I Rule 10 CPC on surmises and conjectures and has further stated that the application under Order VI Rule 17 CPC has been rendered infructuous. It is submitted that both the orders are against law and deserve to be set aside and the revision petition filed by the petitioner deserves to be allowed inasmuch as the said Gurvinder Kumar and LRs of Gejo are necessary parties for the purpose of proper and complete adjudication of the case and for the purpose of passing an effective decree, in favour of the petitioner-plaintiff in case the petitioner-plaintiff succeeds in proving the averments made in the plaint. It is further submitted that the case is at an initial stage and at any rate, any delay in the proceedings would primarily prejudice the petitioner.

ARGUMENTS ON BEHALF OF RESPONDENTS:

4. Learned counsel for the respondents, on the other hand, has opposed the present revision petition and has submitted that the impugned orders have been rightly passed and deserve to be upheld. It is submitted that in case the said Gurvinder Kumar and LRs of Gejo are made parties, then the same would change the nature of the suit and would also result in such persons becoming party who have no connection to the agreement to sell. It

is submitted that there is no collusion between the said Gurvinder Kumar on



one side and the present respondents/defendants on the other side. It is thus prayed that the impugned orders be upheld and the revision petition be dismissed.

ANALYSIS AND FINDINGS:

5. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned orders are against law and deserve to be set aside and the revision petition deserves to be allowed for the reasons stated hereinafter.

6. The petitioner had filed a suit for possession by way of specific performance of the contract on the basis of an agreement dated 03.06.2017 and also on the basis of an unregistered sale deed dated 03.07.2017 with respect to the suit property. The said suit was filed against Jogindro and Paramjeet Kaur who were the widow and daughter of Balvir Ram. The headnote of the said suit is reproduced hereinbelow:

“Suit for possession by way of specific performance of contract on the basis of agreement dated 03.06.2017 and on the basis of unregistered sale deed dated 3.7.2017 of property measuring 1 Marla 1½ Sarsahi being 7/384 share out of 3 kanal 4 marla bearing khasra No. 881 (3-4), Khewat No.640/606/1, Khatoni No.901 as shown in jamabandi for the year 2010-2011 situated in the area of Phagwara Garbi alongwith construction comprising one room, one Chaubara, stair case with boundary wall having been constructed and is bounded as: East: House of Gulshan Malhotra 16 ft., West: Share of Gurwinder Kumar and Gejo 16 ft, North: House of Swaran chand 12 ft, south: Rod 20 ft wide/ 12 ft, for a total consideration of Rs. 10,00,000/- thereby directing the defendants to execute sale



deed of the above stated property in favour of the plaintiff on payment of Rs.5,00,000/- after adjusting Rs. 5,00,000/- already received by defendants i.e. on actual payment of Rs. 5,00,000/- being the balance sale consideration amount, with all the rights interests as mentioned in detail above.

And in the alternative suit for recovery of Rs. 10,00,000/- i.e. Rs.5,00,000/- paid as earnest money and Rs. 5,00,000/- as liquidated damages.”

7. A perusal of the plaint would show that it was the case of the plaintiff/present petitioner that an amount of ₹1 lakh was paid as earnest money on the date of the agreement to sell and in addition, an amount of ₹4 lakh was paid to the defendants on 23.06.2017 and since the defendants had backed out from the said transaction, thus, the suit was filed. In the written statement dated 16.08.2021 (Annexure P-2), an objection was raised that Gurvinder Kumar who is the son of defendant No.1 and brother of defendant No.2 in the present suit, had filed a suit for declaration and the said civil suit had been decreed in his favour and thus, he had become the owner of the property in question and the defendants were neither owners nor co-owners of the suit property and thus the suit for specific performance cannot be decreed on the said account alone.

8. Immediately thereafter, the petitioner filed two applications, one for amendment and the other for making the said Gurvinder Kumar and LRs of Gejo parties. Since the said Gurvinder Kumar had a judgment in his favour subsequent to the filing of the present suit, thus, it is necessary for the plaintiff/present petitioner to implead him as a party in order to pursue his case for specific performance. By virtue of the amendment, a declaration was sought to the effect that the judgment and decree dated 13.02.2020



passed by the trial Court in the case titled as Gurvinder Kumar Vs. Gejo and others was illegal, void and a result of fraud and collusion between the defendants and said Gurvinder Kumar and Gejo and it was pleaded that purposely the defendants had not pursued the case and had not led any evidence.

9. A perusal of the judgment dated 13.02.2020 which has been annexed as Annexure P-3 would show that the suit in the said case had been instituted on 03.07.2017 which is immediately after the date of the agreement to sell i.e. 03.06.2017. The challenge in the suit filed by Gurvinder Kumar who is admittedly the son of Jogindro (present respondent No.1) and the brother of Paramjeet Kaur (present respondent No.2) was to the mutation No.43827 which was in favour of present defendants and the said Gurvinder Kumar and Gejo in equal shares and had been apparently entered into after the death of Balvir @ Balvir Ram, the father of the said Gurvinder Kumar, who died on 25.10.2013. Thus, the mutation was challenged after several years immediately after entering of the said agreement to sell in favour of the petitioner/plaintiff. It would also be relevant to note that in the suit filed by Gurvinder Kumar, the present defendants had filed a written statement and reference to their stand has been made in paragraph 3 of the judgment and decree dated 13.02.2020, which is to the effect that the Will which was propounded by Gurvinder Kumar had been cancelled/revoked vide cancellation/revocation of Will dated 10.07.2013. In spite of the above stand, it was noticed by the trial Court that the defendants had failed to lead any evidence in their defence, which fact, was specifically mentioned in para 13 of the said judgment. The trial Court



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in the said judgment had further observed as under:

*“27. Now, when we apply the said conditions prescribed under the law, to the case in hand, **the Court, in utmost dismay, is bound to hold that the defendants have failed to adopt the procedure envisaged under law by not examining the necessary witnesses to prove the revocation of WILL Ex.PW3/D1.**”*

From the above, it is apparent that the defendants did not produce any witness to prove the revocation of the Will and accordingly the suit filed by Gurvinder Kumar was decreed.

10. Learned counsel for the petitioner has specifically stated that no appeal against the said judgment has been filed. On a pointed query raised by this Court, learned counsel for the respondents has not been able to deny the fact that no appeal against the judgment dated 13.02.2020 has been filed.

11. In the said facts and circumstances, it cannot be said that the plea which is sought to be raised in the amended plaint to the effect that a collusive decree has been passed in favour of Gurvinder Kumar does not even merit consideration. In the said circumstances, the impleadment of Gurvinder Kumar as well as LRs of Gejo was necessary and even the amendment was necessary for proper and final adjudication of the case. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of **Rajesh Kumar Aggarwal & Ors. Versus K.K. Modi & Ors.** reported as **2006(2) RCR (Civil) 577**. The relevant portion of the said judgment is reproduced hereinbelow:-

“13. The object of the rule is that Courts should try the



merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.”

12. Additionally, it would be relevant to mention that it is the plaintiff who is the *dominus litis*. It is the suit of the plaintiff for possession by way of specific performance of the agreement and the delay, if any, would primarily prejudice the plaintiff. Further in case the said Gurvinder



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Kumar and LRs of Gejo are not made parties and the petitioner is not permitted to amend the plaint, then in the said circumstances, the petitioner would be fighting a half lost battle inasmuch as since the suit property now stands transferred by virtue of the judgment and decree dated 13.02.2020 in favour of the said Gurvinder Kumar in a suit in which the present defendants/respondents were parties, the chances of the plaintiff/present petitioner getting a decree of specific performance even after proving the agreement to sell would be minimal. The rights of the plaintiff/petitioner cannot be foreclosed on account of a subsequent judgment suffered by the defendants/respondents in favour of their relative Gurvinder Kumar.

13. Keeping in view the abovesaid facts and circumstances, the impugned orders dated 19.11.2024 and 03.12.2024 are set aside and the applications filed by the petitioner for amendment as well as for impleadment (Annexures P-4 and P-6 respectively) are allowed.

14. It would be relevant to note that the observations made in the present order are for the purpose of considering the legality and otherwise of the impugned orders, vide which the application for amendment and the application for impleadment filed by the plaintiff have been decided and the same should not be construed as an expression on the merits of the main trial and the trial Court would decide the suit independently.

April 27th, 2026
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes