



CR-3180-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(129)

CR-3180-2024 (O&M)

Date of Decision: - 25.03.2026

Amit Rathaur

....Petitioner

Versus

Sunita Chaudhary

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Shiv Kumar, Advocate
for the petitioner.

None for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 12.04.2024 (Annexure P-8) passed by the Civil Judge (Junior Division), Faridabad, vide which the applications filed by the petitioner under Order 1 Rule 10 read with Section 151 CPC and under Order 6 Rule 17 read with Section 151 CPC have been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for specific performance of the agreement to sell dated 15.05.2018 and 18.12.2018. It is further submitted that in the said case, the defendant-respondent had filed a written



statement on 21.09.2020 (Annexure P-2), in which, it was stated by the defendant that she was the owner and in possession of the suit property and that she had not disclosed the fact that she had further sold the property. It is stated that immediately on learning about the said fact that the defendant had further sold the property, the petitioner moved the applications on 25.02.2022 for impleadment of the said purchaser as well as for amendment of plaint under Order 6 Rule 17 read with Section 151 CPC in order to make necessary averments and prayers with respect to the said sale deed. It is submitted that however the said applications have been dismissed vide impugned order dated 12.04.2024 (Annexure P-8) on surmises and conjectures. It is argued that the person in whose favour the defendant had sold the property is a necessary party as the said sale was prior to the institution of the suit. It is further argued that even the amendment incorporating the said fact is necessary for the proper and final adjudication of the case. It is submitted that since the defendant in the written statement had not disclosed the said fact, thus, the petitioner/plaintiff was unaware about the same and thus, despite due diligence, the petitioner could not have mentioned the said fact at an earlier stage.

3. Notice of motion was issued in the present case and vide order dated 07.03.2025 passed by the Co-ordinate Bench of this Court, the proceedings before the trial Court were stayed. On 18.11.2025, Mr.Naveen Kashyap, Advocate, had put in appearance on behalf of the respondent and he had filed his power of attorney, which was taken on



record and he had sought time to argue the matter. Thereafter, the matter was adjourned to 24.03.2026. On 24.03.2026, this Court was pleased to pass the following order: -

*“Present:- Mr. Shiv Kumar, Advocate
for the petitioner.*

None for the respondent.

In spite of the matter having been called three times, none has appeared on behalf of the respondent.

Learned counsel for the petitioner has submitted that the interim order is in effect prejudicing the rights of the petitioner only as it is his suit which has been stayed.

In the interest of justice, adjourned to 25.03.2026 for arguments.

To be taken up in the urgent list.

It is made clear that in case the respondent does not come to argue the case tomorrow, then, this Court would decide the case on the basis of the available record.

March 24, 2026”

4. Today also, no one has appeared on behalf of the respondent to contest the present revision petition.

ANALYSIS AND FINDINGS

5. This Court has heard learned counsel for the petitioner and has perused the paper-book and finds that the present revision petition is meritorious and the impugned order dated 12.04.2024 is against law and the applications filed by the petitioner under Order 1 Rule 10 read with Section 151 CPC and under Order 6 Rule 17 read with Section 151 CPC, deserve to be allowed for the reasons detailed hereinafter.



6. From a perusal of the plaint (Annexure P-1), it is apparent that the present petitioner had filed a suit for specific performance of the agreement to sell dated 15.05.2018 and 18.12.2018 and for possession. The delay in the proceedings thus would primarily prejudice the petitioner/plaintiff. Written statement dated 21.09.2020 (Annexure P-2) was filed by the defendant, in which, it was specifically stated by the defendant that she is the owner and in possession of the suit property. The fact that the property had already been sold by the defendant/respondent to one Inder son of Mahabir vide sale deed dated 23.07.2018 i.e., after the first agreement of sell dated 15.05.2018 propounded by the petitioner, was not disclosed in the written statement. Since the said Inder Singh son of Mahabir is a necessary party, the petitioner filed an application dated 25.02.2022 (Annexure P-3) for impleadment of the said Inder Singh son of Mahabir. Along with the said application, another application under Order 6 Rule 17 read with Section 151 CPC (Annexure P-4) was filed so as to incorporate the pleas and so as to make proper prayers with respect to the sale deed dated 23.07.2018 and also qua the proposed defendant No.2. The trial Court vide impugned order dated 12.04.2024 on surmises and conjectures has dismissed both the said applications.

7. It is a matter of settled law that in a suit for specific performance, a person to whom the property has been sold prior to the institution of the suit, is a necessary party. The petitioner is *dominus litis* and thus, has every right to implead the said person as a party to the suit. Non-impleadment of the said subsequent purchaser could be fatal to the



suit of the plaintiff and the said suit would be liable for dismissal on account of non-joinder of necessary party. It is the case of the plaintiff/petitioner that the first agreement to sell in his favour is dated 15.05.2018, whereas, the sale deed had been executed by the defendant in favour of the subsequent purchaser on 23.07.2018. Thus, the issue as to whether the petitioner/plaintiff who is alleging a prior agreement to sell would be entitled to specific performance or not or the said Inder Singh is a bona fide purchaser or not, is an issue which would required to be decided in the civil suit, for the final and proper adjudication of the dispute.

8. It would be relevant to note that the defendant had very cleverly in his written statement dated 21.09.2020 not disclosed the fact that she had already sold the property and had rather made a statement that she is owner and in possession of the suit property. Moreover, the delay in the proceedings would primarily prejudice the petitioner/plaintiff as it is his suit for possession by way of specific performance which is being delayed. In the said circumstances, the applications filed by the petitioner are meritorious and should have been allowed and the subsequent purchaser should have been made a party.

9. With respect to application under Order 6 Rule 17 CPC, it would be relevant to note that the Hon'ble Supreme Court in the case of **“Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.”**, reported as **2006(2) RCR (Civil) 577** had observed that all the amendments which are necessary for determining the main question in controversy between



the parties should be allowed and at the stage of allowing the amendment, the merits of the amendment are not required to be considered. 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.

xxx xxx xxx

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.

xxx xxx xxx

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.”

10. In the present case, since the application for impleadment of the subsequent purchaser has been found to be meritorious and the subsequent purchaser has been ordered to be impleaded, it would be necessary for the petitioner/plaintiff to make pleadings with respect to the

said sale deed and to make appropriate prayers with respect to the said sale deed in favour of the subsequent purchaser and also to seek appropriate reliefs against the said added defendant which have already been made in the application (Annexure P-4).

11. Keeping in view the above-said facts and circumstances, the present revision petition is allowed and the impugned order dated 12.04.2024 (Annexure P-8) is set aside and the applications filed by the petitioner under Order 1 Rule 10 read with Section 151 CPC (Annexure P-3) and under Order 6 Rule 17 read with Section 151 CPC (Annexure P-4) are allowed.

12. Needless to say that the defendant/proposed defendant would be given opportunity to file amended written statement/written statement to the amended plaint.

March 25, 2026

naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes