
(2009) 07 P&H CK 0109
In the Punjab And Haryana At Chandigarh

Kanwar Jagdish Singh Sawhney	Vs	APPELLANT
Vijyant Choudhary and Others		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2009) 155 PLR 764 : (2009) 4 RCR(Civil) 831

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.—Vide this revision petition, the petitioner has challenged the order dated 26.2.2009 passed by the Civil Judge (Jr. Division), Chandigarh, whereby, respondent No. 1/plaintiff was allowed to amend the plaint.

2. Brief facts of the application seeking amendment of plaint, as noticed by the trial Court in para Nos. 2 and 3 of the impugned order, are as under:

During the pendency of the suit, cause of action to file suit and to seek relief of specific performance of the agreement to sell dated 27.8.2007 has accrued to the plaintiff as the last date fixed by the parties for execution and registration of Sale Deed was 30.11.2008 and defendant has failed to execute and register the Sale Deed in accordance with terms and conditions of the Agreement to Sell dated 27.8.2007, thus necessity to amend the plaint has accrued to the plaintiff. The proposed amendments which are required to be made in the plaint have also been detailed in the application. It was further submitted that cause of action to seek relief of specific performance of the agreement to sell dated 27.8.2007, and for possession of Industrial Plot No. 186-B, Industrial Area, Phase-I, Chandigarh, along with mandatory injunction has accrued to the plaintiff when the defendant failed to perform his part of the contract i.e. terms and conditions of the agreement to sell dated 27.8.2007 during the pendency of the suit for injunction and necessity to amend the plaint has accrued on , account of non-performance

of the terms and conditions on the part of the defendant. Since the breach of the terms and conditions of the agreement to sell dated 27.8.2007 has been committed by the defendant, so the plaintiff is entitled to seek the relief of specific performance of the agreement to sell dated 27.8.2007 and for possession of the plot in question. It was further submitted that proposed amendments are necessary for the proper adjudication of the matter in controversy and to avoid multiplicity of litigations. The proposed amendments do not add a new case nor it changes the nature of the case. Hence, the present application.

3. Reply of the present application was filed by the respondent/defendant. It was submitted therein that present application is not maintainable. Though, the plaintiff is seeking amendment of the suit, but actually he is converting it from suit for permanent injunction into suit for specific performance and by doing so, he is changing the very nature of the suit which is not permissible. The ingredients of a suit for permanent injunction and that of specific performance are totally different. The plaintiff can file a new suit for permanent injunction, but can not be allowed to alter the very nature of the suit. The proposed amendments are impermissible in law. However, if the proposed amendments are allowed, the defendant reserves right to file written statement to the amended suit. Dismissal of the application was prayed for.

3. After hearing learned Counsel for the petitioner, I am of the opinion that there is no ground for interference by this Court. The plaintiff filed a suit for permanent injunction restraining the defendants from alienating, transferring, mortgaging or creating any interest in the suit property on the basis of agreement to sell dated 27.8.2007. As per the agreement to sell, the date for execution of the sale deed was fixed as 30.11.2008. However, in August, 2008 the plaintiff on coming to know that defendant No. 1 was taking steps to alienate the property, filed the suit for permanent injunction. During the pendency of the suit, defendant, however, did not execute the sale deed on the agreed date i.e. 30.11.2008 and on account of this, the plaintiff sought the permission to amend the suit and sought the relief of specific performance.

4. Order VI, Rule 17 of the CPC ("CPC" for short) reads as under:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

5. From the impugned order, it is evident that the trial of the case has not commenced yet as issues have not been framed so far and consequently no

evidence has been led by any of the parties. In these circumstances, since the cause of action to claim the relief of specific performance of agreement to sell accrued to the plaintiff during the pendency of the suit, the learned trial Court rightly allowed the application seeking amendment of the plaint under Order VI Rule 17 CPC. Hence, the impugned order does not call for any interference.

6. Accordingly, this petition is dismissed.