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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:06.03.2025

GURMAIL SINGH (SINCE DECEASED) THROUGH LRS

...PETITIONER

VS.

IQBAL KAUR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Ajaivir Singh, Advocate
for the petitioner.

SUVIR SEHGAL, J.

1. Petitioner/plaintiff has approached this Court assailing order dated 14.01.2025, Annexure P-1, passed by the learned Additional Civil Judge (Senior Division), Phagwara, whereby an application filed by him under Order 6 Rule 17 CPC for amendment of the plaint, has been dismissed.

2. Mr. Ajaivir Singh, counsel for the petitioner has contended that by way of an amendment, petitioner/plaintiff has sought correction of a clerical mistake, which would have provided clarity and aided the Court to arrive at a just decision. He asserts that by way of an amendment, no new cause of action is being raised, nor does the proposed amendment alter the nature of the suit. He contends that the Trial Court has erred in dismissing



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the application without appreciating the legal position as has been settled by the Supreme Court in *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another* (2022) 16 SCC 1.

3. I have heard counsel for the petitioner and considered his submission besides examining the documents placed on the record.

4. Plaintiff filed a suit, Annexure P-2, for specific performance of agreement to sell dated 29.01.2018 and for directing the defendants to execute and register the sale deed for land measuring 7 kanals 19 marlas in Tehsil Phagwara, District Kapurthala. Plaintiff also sought permanent injunction restraining the defendants from alienating, transferring or mortgaging the suit land. An alternative relief of recovery of Rs.85.70 lacs was sought from defendant No.2. Upon service, defendants No.1 & 2 filed a written statement dated 10.10.2022, Annexure P-4, categorically denying the agreement. A stand was taken that the alleged agreement to sell dated 29.01.2018 is a forged and fabricated document and earnest money of Rs.30 lacs was never paid. The signatures of defendant No.2 as attorney of Surjit Singh on the alleged agreement was also denied. On the basis of the pleadings of the parties, Trial Court framed issues on 08.08.2024, Annexure P-5, and the proceedings were adjourned for leading evidence by the plaintiff, who sought repeated adjournments. After “special last opportunity” was granted to the plaintiff to produce his entire evidence, application, Annexure P-7, was filed for the amendment of the plaint. After contest, this application has been rejected vide order impugned herein.



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5. The plea of the plaintiff that by way of the proposed amendment, he intends to correct the date and bring about more clarity is an after thought. The entire case of the plaintiff is based on agreement to sell dated 29.01.2018, which has been specifically denied by the defendants in their written statement filed in October, 2022. Despite being aware of the denial of the agreement by the defendants, no step was taken by the plaintiff for almost two years to move any application. The Trial Court even proceeded to frame the issues on the basis of the pleadings of the parties. Issue No.1 framed by the Trial Court is to the fact as to whether plaintiff is entitled to the relief of possession by way of specific performance of agreement to sell dated 29.01.2018. Under the garb of the application for amendment, whereby the plaintiff seeks to modify the date of agreement to sell, the entire nature of the suit would change and a totally new case is being sought to be set up which would displace the earlier case pleaded by the plaintiff.

6. Amendment of the plaint is not a matter of right. After the amendment of the Code of Civil Procedure in the year 2022, a proviso has been added to Order 6 Rule 17, CPC, which provides that after the trial has commenced, a party seeking amendment has to show due diligence. There is no explanation in the application filed by the plaintiff, which exhibits the due diligence on his part. Mere fact that the defendants can be compensated with the cost does not meet the requirement of Order 6 Rule 17, CPC.

7. In **Chander Kanta Bansal Vs. Rajinder Singh Anand (2008) 5 SCC 117**, Supreme Court has observed that the entire object of the



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amendment to Order 6 Rule 17, CPC as introduced in the year 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties have sufficient knowledge of each others case. It also helps in checking the delays in filing the application. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. Proviso to Order 6 Rule 17, CPC limits the power of the Court to allow amendment after the commencement of the trial but grants discretion to the court to allow amendment if it feels that a party could not have raised the matter before the commencement of trial despite due diligence. In ***Basavaraj Vs. Indira and others (2024) 3 SCC 705***, Supreme Court has held that a heavy burden is cast on the party seeking amendment after the commencement of trial to show that in spite of due diligence, such amendment could not be sought earlier. Plea of oversight, cannot be accepted as a ground to allow any amendment in the plaint when facts were to the knowledge of the party. The judgment of the Supreme Court in ***Sanjeev Builders's*** case relied upon by counsel for the petitioner is not applicable to the facts of the present case. This Court does not find any perversity or irregularity in the order passed by the Trial Court.

8. Petition being bereft of merit, is dismissed, though with no order as to costs.

06.03.2025

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No