

Writ Petition No.21466 of 2010

MAQBOOL AHMAD VERSUS ADDITIONAL DISTRICT JUDGE etc.

08.06.2011 Mian Muhammad Saeed Advocate for Petitioner.
Mr. Agha Abul Hassan Arif Advocate for Respondent.

Through the instant writ petition the order dated 29-9-2010 passed by the learned Additional District Judge, Lahore has been assailed whereby the civil revision instituted by the present petitioner against the order dated 20-10-2009 passed by learned Civil Judge, Lahore partly rejecting the application moved by the petitioner for amendment of the plaint under Order VI, Rule 17 of C.P.C., was dismissed.

2. Briefly stating the facts of the case are that the petitioner instituted a suit for possession through specific performance of an agreement to sell dated 15-9-2006 and also for permanent injunction before the court of learned Senior Civil Judge, Lahore on 8-2-2008, which was entrusted to a learned Civil Judge, Lahore and is pending there. In the plaint, the petitioner contended that land measuring 2-1/2 acres (20 kanals) bearing Khasra Nos. 2188/2185 situated in Hadbast Mouza Shahdra Town, Lahore was purchased by him through an agreement to sell dated 15-9-2006 from the defendant of the suit for a sum of Rs.2,50,000. The petitioner further contended that the entire sale price was paid by him to

the defendant on 12-7-2006 and the possession of the petitioner was also acknowledged by the defendant of the suit. This suit was contested by the defendant-respondent by submitting his written statement. The agreement to sell as claimed in the plaint was specifically denied. In paragraph No.4 of the written statement of preliminary objections the defendant took up the plea that one Muhammad Ashraf son of Muhammad Sadiq is the Thakedar/lessee of the suit property for the previous 20 years and in the year 2006 the petitioner-plaintiff who had a friendly relationship with the defendant and his family members asked the plaintiff to lease out his share in the subject property and in this context two blank stamp papers were got thumb-marked by the plaintiff from the defendant in pursuance to an oral agreement of lease. The defendant of the suit took up the plea that he being the joint owner in the subject property could not have entered into an agreement to sell with anybody and that he however later on sold away the subject property to said Muhammad Ashraf son of Muhammad Sadiq through a registered sale-deed. Both the agreements were thus alleged by the defendant to be fabricated by the petitioner-plaintiff and the suit has been instituted for the enforcement of the said agreements. The petitioner moved an application under Order VI Rule 17 of C.P.C. read with section 151 of C.P.C. for the amendment of the plaint. The petitioner sought the correction of the khasra and khewat numbers of the subject land and also sought the correction of the mutation number given in

the plaint. The date of the agreement to sell dated 15-9-2006 was also requested to be added instead of the date given as 12-7-2006. The petitioner also sought an addition of Paragraph No.8-A with the following narration of facts:--

"That subsequently it transpired that under the inheritance Mutation No.38286 of Salman Khata the defendant's entitlement of land is only for 10 Kanals whereas the defendant under the agreement to sell dated 15-9-2006 agreed to sell land measuring 20 Kanals in favour of the plaintiff. It is worth to mention here that the plaintiff is still ready to get the land measuring 10 Kanals, being the entitlement of defendant under the inheritance Mutation No. 38286, for same price i.e. against the entire consideration of Rs.2,50,000 mentioned in the agreement to sell dated 15-9-2006 which the defendant has already received from the plaintiff and the plaintiff bonafidely is still ready to have the completion of the same in his favour by way of regular sale-deed."

The description of the property thus was sought to be corrected and more specified. This application was resisted by the respondent-defendant. The learned Civil Judge partly allowed the application of the petitioner to the extent of correction of the date of the agreement and rest of the prayer was declined through order dated 20-10-2009. The petitioner then filed a revision petition against the order dated 20-10-2009 to the extent of refusal of the prayer of the amendment in the plaint sought by the petitioner and this revision petition came up for hearing before the learned Additional District Judge, who dismissed the same vide impugned order dated 29-9-2010. Hence, this writ petition.

3. It is contended by the learned counsel for the petitioner

that the suit for specific performance was instituted by the petitioner and only correction of the khasra numbers and of the description of the property was sought by the petitioner and by no means any change in the nature of the suit by allowing the whole amendment sought by the petitioner could have resulted. Learned counsel has relied upon the judgments reported as Qamar-ud-Din v. Muhammad Din and others (PLD 2001 Supreme Court 518), Mst, Rahim Noor v. Mst. Salim Bibi and 2 others (PLD 1992 Supreme Court 30), Chaudhary Nazir Ahmad v. Mrs. Mariam Salauddin Khawaja and others (PLD 1994 Lahore 252), Government of N.-W.F.P and another v. Gul Muhammad Khan and 5 others (1996 SCMR 1858) and Mst. Mumtaz Begum and 8 others v. Province of Sindh through Chief Secretary, Government of Sindh and 5 others (2004 CLC 697) to contend that when a suit is at the initial stage, the amendment in the plaint is to be liberally allowed by the courts.

4. Learned counsel for the respondent has resisted the prayer of the petitioner by contending that the entire complexion of the suit, by correcting the description of the property as originally reflected in the plaint, will be changed in case the amendment is allowed and that the impugned orders passed by the two courts below are therefore in accordance with law and no interference is called for in the matter.

5. I have considered the arguments addressed by learned

counsel for the parties.

6. Petitioner-plaintiff has sought correction of the description of the property through the amendment prayed for. The defendant-respondent has denied the agreement to sell for the specific performance of which the petitioner has instituted the suit. The description of the property to be added through the amendment would make no difference to the plea raised by the defendant in his written statement of the denial of the agreement to sell as claimed by the petitioner. The learned Civil Judge has allowed the petitioner to correct the date of the agreement to sell through the order dated 20-10-2009. The acceptance of the application for correction of the description of the property would not have changed the complexion of the suit which would remain a suit for specific performance. The case-law relied upon by the learned counsel for the petitioner is on the point that in a civil suit the permission for amendment of the plaint is to be allowed liberally. While respectfully following the case-law cited by learned counsel for the petitioner I am of the view that the learned two courts below should have allowed the amendment application moved by the petitioner, which only entailed the more detailed description of the subject property and the correction of its khasra numbers/khewat numbers.

7. In view of the above, this writ petition is allowed and the impugned orders passed by the two learned courts below partly refusing the application moved under Order VI, Rule

17 of C.P.C. by the petitioner are set aside and application moved by the petitioner is allowed. The respondent-defendant, however, shall be at liberty to raise all the legal as well as factual objections which may be available to him against the amended plaint, through the written statement to be submitted by him. There is no order as to costs.

(NASIR SAEED SHEIK)
Judge