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**(2010) 09 P&H CK 0363**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Jai Kishan Passi

APPELLANT

Vs

Thakur Dass Batra and Others

RESPONDENT

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**Date of Decision:** Sept. 6, 2010

**Acts Referred:**

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

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Alok Singh, J.

Present petition is filed challenging the order dated 10.5.2010 passed by learned Civil Judge (Rent Controller), Hoshiarpur, whereby the application moved by the defendants seeking amendment in the written statement was rejected.

2. Brief facts of the present case inter-alia are that plaintiffs/respondents had filed a suit for separate possession of 1/3rd share by partition of the property mentioned in the head note of the plaint and further declaring that sale deed dated 22.3.2001 executed by defendant No. 1 in favour of defendants No. 2 and 3 and subsequent sale deeds executed by defendants No. 2 and 3 in favour of defendant No. 4 are ineffective qua rights of the plaintiffs. In the plaint, plaintiffs have mentioned about the agreement to sell dated 01.02.2001, whereby plaintiffs agreed to sell their 1/3rd share of the property in dispute to defendant No. 1 for the total consideration of Rs. 23 lacs. Defendant No. 1 - petitioner herein filed a written statement before the learned trial Court, thereby admitting the existence of the agreement to sell dated 1.2.2001 in paragraph No. 2 and 3 of the written statement. Issues have been framed in the suit and plaintiffs have led their evidence and case was listed for cross-examination of the plaintiffs' witnesses. At that stage, defendant/petitioner moved an application seeking amendment in the written statement, thereby seeking deletion of paragraph Nos. 2 and 3 of the written statement and seeking

permission to substitute new paragraphs in place of paragraph Nos. 2 and 3 in the written statement, thereby denying existence of agreement dated 1.2.2001 and pleading that agreement dated 1.2.2001 has already been revoked. 3. From the perusal of the record, it reveals that earlier defendant/petitioner had not taken any plea of the revocation/cancellation of the agreement to sell dated 1.2.2001 rather admitted existence of the agreement.

4. Order 6 Rule 17 C.P.C. alongwith proviso reads as under:

17. Amendment of pleadings:- 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 perusal of the proviso, it can safely be said that an application seeking amendment in the pleading can be moved at any stage of the suit, however, application seeking amendment shall not be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of the trial.

6. Learned Counsel appearing for the petitioner/defendant vehemently argued that due to fault of the Counsel for the defendant before the learned trial Court, plea of revocation/cancellation of the agreement to sell could not be taken and existence/execution of the agreement to sell was wrongly admitted. Learned Counsel for the petitioner has placed reliance on the judgment in the case of Sushil Kumar Jain v. Manoj Kumar and Anr. reported in 2010 (1) CCC 446 (S.C.) and argued that even inconsistent pleas can be taken in the written statement. The Hon"ble Apex Court in the matter of Sushil Kumar Jain (supra) in paragraph No. 9 has held as under:

9. That apart, a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.

7. There is no dispute about the proposition of law that admission can be explained by way of amendment. However, if party seeking amendment wants to withdraw the admission, thereby taking away valuable rights accrued in favour of the opposite party, such amendment cannot be permitted. In the present matter, trial has already been commenced. It has not been explained as to why pleas sought to be

taken by way of an amendment could not be taken inspite of due diligence. Application for amendment is not maintainable, if party is seeking amendment is not able to prove that inspite of due diligence pleas sought to be taken could not be taken. No interference is called for.

8. Petition is devoid of merit, hence, is dismissed.