

CR NO. 1220 OF 2015

Date of decision: 25.02.2015

Hari Chand

..... Petitioner

versus

Ram Karan(deceased) through Lrs' and others

..... Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Arvind Kashyap, Advocate  
for the petitioner.Rakesh Kumar Jain,J.(Oral)

This petition is against the order dated 7.02.2015, dismissing the application filed by the petitioner to withdraw the pending suit to file it a fresh with same cause of action.

Learned counsel for the petitioner has argued that due to inadvertence on the part of the plaintiff, the suit for declaration was filed that the plaintiff is owner to the extent of 1/3<sup>rd</sup> of share in the land in dispute and also prayed for permanent injunction to restrain the defendant from changing the nature of the suit land by raising construction. The plaintiff has claimed his right over the property in dispute on the basis of agreement to sell dated 7.08.2004 on the basis of which the sale deed was executed and registered on 6.09.2005. Later on, it was realised by the plaintiff that instead of filing suit for declaration, he should have filed a suit for specific performance of the agreement to sell. Therefore, an application under Order 23 Rule 3 of the Code of Civil Procedure was filed for withdrawing the suit with permission to file fresh one on the same cause of action but the said application was dismissed by the trial court on the ground that it is barred by limitation. It is argued by learned counsel for the petitioner that whether the suit would be barred by limitation or not would be seen by the

court concerned, if the permission is granted to file the same after withdrawing the present suit.

I have heard learned counsel for the petitioner and after examining the record, I am of the considered opinion that the petitioner has rightly been non-suited by the trial court because as per Article 54 of the Limitation Act, 1963, the limitation to file a suit for specific performance is three years from the date when the defendants refuses to execute the agreement. In the present case, admittedly, the agreement to sell was executed between the parties on 7.08.2004 and the sale deed was to be executed and registered on 6.09.2005 and since the sale deed was not executed and registered by the defendants, therefore, cause of action had accrued to the petitioner in 2005. Thus, the suit for specific performance could have been filed in the year 2008. Now the petitioner prays for withdrawal of suit for declaration in order to file a suit for specific performance which is clearly barred by limitation. Therefore, there is no error committed by the trial court in this regard. Dismissed.

**25<sup>th</sup> February, 2015**

Shivani Kaushik

**[RAKESH KUMAR JAIN]  
JUDGE**