

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.1312 of 2013(O&M)

Date of decision: 13.10.2015

Vimla Devi and another

.....Petitioners

versus

M/s Countrywide Promoters Private Limited

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kunal Dawar, Advocate for the petitioners
Mr.Hemant Saini, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 20.12.2012, Annexure P1, passed by the learned Civil Judge, Junior Division, Faridabad, vide which, the application filed under Order 6 Rule 17 CPC by the plaintiff for amendment of the plaint was allowed.

Suffice it to say that the plaintiff filed a suit for permanent and mandatory injunction claiming that there is an agreement to sell dated 22.10.2006 in his favour by the defendant regarding the land measuring 13 kanal 13 marla. There was a condition in the agreement that the sale deed will be executed tentatively within nine months after the defendant get the said land partition and the mutation of the said partition is sanctioned in her name. It comes out that in the said suit, written statement was filed on 26.11.2009,

disclosing about the said partition. Thereafter, on 1.11.2012, the present application was filed for permission to amend the plaint, so as to convert the suit into the suit for specific performance.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has argued that the suit is time barred as the period of nine months has elapsed on 21.7.2007. The contention is controverted by the counsel for the respondent -plaintiff on the ground that nine months period for execution of the sale deed is to be counted from the date the defendant get the partition done and mutation in this regard is sanctioned. It is further argued that the intimation in this regard was to be given to the plaintiff and it is only from the date of intimation that period of limitation of three years will start. However, this fact came to the knowledge of the plaintiff only when the written statement was filed on 26.11.2009 and from the said date, suit falls within limitation.

Learned counsel for the appellant has also relied upon the authorities of the Hon'ble Supreme Court in K.Raheja Constructions Ltd. v. Alliance Ministries, 1995 AIR (SC) 1768, Pankaja & another v. Yellappa (D) by Lrs & others, 2004(3) RCR (Civil) 723, Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) v. Ramesh Chander and others, 2011(3) RCR (Civil) 620.

In the given circumstances, the plaintiff could convert the suit for permanent injunction into a suit for specific performance if the cause of action arises. In this case, the question of limitation in my opinion is a mixed question of facts and law and is to be determined

after recording the evidence to see that from which date the condition in the agreement is stated to have been complied with. Lower Court has already put up the condition of granting two opportunities to the plaintiff to conclude the evidence and costs have also been imposed. In these circumstances, I am of the view that the amendment is necessary for the just decision of the case and was rightly allowed. Consequently, the present revision is dismissed with the observation that the question of limitation being the mixed question of facts and law, the lower Court will frame the specific issue in this regard and decide the same on merits.

13.10.2015*gk***(Kuldip Singh)
Judge**