

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.1178 of 2014 (O&M)
Date of decision: 17.12.2015**

Karandeep Singh

... Petitioner

versus

Bachana Ram and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Diwan S. Adlakha, Advocate for the petitioner.

Mr. P.S. Poonia, Advocate for the respondents.

K.Kannan, J.

The revision petition is against the order allowing for an amendment to the plaint to specifically state the relief for specific performance which had been originally framed as relief for mandatory injunction for execution of sale deed with permission from the Court. The agreement was of the year 2004 and the time fixed for enforcement for 31.12.2004. The time for specific performance under Article 54 was 3 years from the time stipulated for completion of sale deed. Since the application for amendment was made in the year 2013, the argument was that if a fresh suit were to be instituted in the year 2013 it should have been barred by limitation and hence the application for amendment cannot be ordered. The Court allowed for such amendment to be brought and hence the defendant is aggrieved.

It is a case where the plaintiff was seeking for relief of specific performance as well as the relief for injunction claiming that he had been put in possession of the property that was agreed to be sold after receipt of consideration of Rs. 11,00,000/- out of total consideration of Rs. 11, 04, 031.25. The agreement had been executed by the step mother purporting to act on behalf of the step son. It would appear that the defendant had been set ex-parte on 08.12.2010 and later

on an application moved by the quondam minor for setting aside the ex-parte decree after treating him as a major. The Court had observed that the Court fee paid was not correct and directed appropriate Court fee for the mandatory relief for execution of the sale deed. While paying the additional Court fee of Rs. 64,000/-, plaintiff had brought an amendment to the prayer as well.

It is a tenable objection at all times that an amendment to prayer cannot alter the relief which can defeat the defendant of his valuable defence of limitation. If in this there had been no prayer at all for enforcement of the agreement and the suit was confined only to the relief of preventive injunction from interfering with the plaintiff's possession, it could be stated that the amendment for specific performance brought more than 3 years after the time stipulated for performance had been barred and consequently such an application would also merit dismissal. On the other hand, if the original plaint contained a relief for mandatory injunction for execution of a sale deed, it must be taken only as an euphemism for the relief of specific performance. So reckoned, it would be obvious that the amendment was restating what was inherent in the original plaint and if at all, the defect was one of insufficiency of Court fee and if the court fee had not been properly affixed for the mandatory relief for execution of sale deed and it had been paid only in the year 2012, an issue of whether the Court can condone the same will be still a matter that the defendant should be permitted to state in his written statement. That objection will be permitted to be taken by the defendant and if such a plea is made, the Court will consider the same in the light of the express provisions contained under Section 149 of the C.P.C while deciding the case. While allowing the amendment as the Court below has done, I give the benefit to the petitioner-defendant to file amendment to the written statement or additional written statement in the manner contemplated under order 8 rule 9 CPC to bring an issue of limitation and the Court will consider the same in the light of the

directions given above.

The impugned order is maintained subject to the observations referred to above.

There is also a plea that the plaintiff was attempting to bring a new amendment setting out inconsistent and indecent pleas. The defendant can state his objections as regards anything which is irrelevant or anything which is a new plea by means of additional written statement.

(K.KANNAN)
JUDGE

17.12.2015

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