

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**CR No. 1405 of 2013(O&M)**  
**Date of decision : September 15, 2015**

**Lagru Ram**

**..... Petitioner**

**Versus**

**Smt. Kanta Devi**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Parminder Singh, Advocate  
for the petitioner.

Mr. Baljinder Singh Sra, Advocate  
for the respondent.

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1. Whether reporters of local papers 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?

**Amit Rawal, J (oral).**

The challenge in the present petition is to the impugned order dated 13.10.2012 (Annexure P-2) whereby an application seeking amendment of the plaint by incorporating the relief of specific performance of the agreement to sell dated 22.9.2002, has been rejected.

Learned counsel for the petitioner submits that the suit for permanent injunction was filed on 10.8.2006 whereas the target date for registration/execution of the agreement to sell was dated 15.6.2003. As per the terms and conditions of the agreement the vendor-respondent-defendant was to obtain, a mutation of the

land/property, in her favour as the same was not done, though, suit for injunction was filed as the plaintiff apprehended that the defendant was contemplating to alienate the suit property.

He further submits that, time was not the essence in the agreement to sell, therefore, the suit for injunction was filed. He further submits that in pursuance to the agreement to sell, the possession of the plot has also been handed over. The petitioner has constructed the house thereon.

Mr. Baljinder Singh Sra, learned counsel appearing on behalf of the respondent-defendant submits that the application for amendment of suit, as per provisions of Order 2 Rule 2 CPC, was barred by law of limitation. There is no illegality and perversity in the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

The copy of the agreement to sell has been annexed as Annexure P-3. The same reads thus:-

*“Inside my plot there is 22'rasta,  
Arun Kumar Sharma s/o Sh. Harbans Lal my  
husband was owner of the said plot, measuring  
16/12 I Kanta Devi, over plot situated in Village  
Hamindpur Tehsil Mulana District Ambala, I has  
sold the same to Lagru Ram. Father name is  
Khajan Chand, has to sold the purchase @ Rs.35  
per sq.yard. I Kanta Devi sell the plot and received  
the amount of Rs. 9000/- as earnest money and the  
possession has delivered by me to Lagru Ram is*

*entitled to construct any house or do in accordance to his wishes. Remaining amount on 15 June would be received after registration of deed. If the purchaser backed from the deed, then the agreement would be forfeited and if the sale deed not registered, then, if I Kanta Devi backed out, then would pay double of amount of Rs. 9,000/-.*

*I Kanta Devi when got its sanctioned the mutation of inheritance of the plot in my name, then would get execute the sale deed to the purchaser on that time (15 June). My husband is expired and I am entitled to the land of my husband. My husband has gave writing to me, who was ill that the land (plot) of measuring 17 ½ Marla would owned and transferred in the name of his wife Kanta Devi. I Kanta Devi herself written that there is no dispute over the said plot.”*

From the perusal of the agreement, it is seen that time was not the essence of the contract and the petitioner-plaintiff has been put in possession of suit property. The application for amendment, in my view, would not be barred by limitation as the respondent-defendant was ready to perform the certain act, that is, to get the property mutated in her name. Having not done so, the petitioner-plaintiff moved an application dated 13.8.2007 seeking amendment of the plaint under Section 12 (2) of the Specific Relief Act, 1963 wherein no time has been prescribed for moving an application. In my view, the observation of the trial court that the application is barred by limitation is not sustainable.

Since time was not the essence of the contract, the limitation would start, as per Article 54 of the Limitation Act, 1963

from the date of refusal as it is a categoric case of the petitioner that once the respondent-defendant has refused to get the property mutated, an application for amendment of the plaint converting the suit for injunction to the suit for specific performance was moved with promptitude.

In view of the aforementioned observations, the impugned order is not sustainable and suffers from illegality and perversity.

The petitioner-plaintiff is permitted to seek amendment as proposed in the application dated 13.8.2007 by incorporating the relief of specific performance of the agreement to sell.

The impugned order is set aside. The revision petition is accordingly allowed.

**(AMIT RAWAL)**  
**JUDGE**

**September 15 , 2015**  
**archana**