

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1478 of 2012

Date of Decision.28.04.2015

Gurmeet SinghPetitioner
Versus
Santokh Singh and othersRespondents

2. C.R. No.458 of 2013

Santokh SinghPetitioner
Versus
Gurmeet Singh and othersRespondents

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner in C.R. No.1478 of 2012
and for respondent No.1 in C.R. No.458 of 2013.

Mr. Munish Jolly, Advocate
for the petitioner in C.R. No.458 of 2013 and
for respondent No.1 in C.R. No.1478 of 2012.

Mr. Ajaivir Singh, Advocate
for respondent Nos.5 and 6 in C.R. No.458 of 2013.

Mr. Y.M. Bhgirath, Advocate
for respondent Nos.2 to 4.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J. (ORAL)

1. Both the revision petitions refer to the same subject mater.
They also arise out of interim orders passed in the same suit and hence they are taken up together. C.R. No.1478 of 2012 is at the instance of the plaintiff, who sought for amendment of the plaint contending two important matters. One, the description of the property given in the plaint contain some typographical error with reference to the khasra

numbers and it did not reproduce correctly the khasra numbers as found in the agreement of sale and therefore, the description of property would require to be corrected. The second amendment which the plaintiff was seeking was that the agreement dated 16.12.2005 was sought to be enforced and the amendment was sought to the effect that the right of the plaintiff was in the manner protected in the subsequent document which had made reference to the earlier document. One of the parties in the agreement dated 16.12.2005 was not even party in the subsequent agreement dated 09.04.2007.

2. The suit was filed on 08.04.2010 and the written statement was filed on 14.09.2010. The application for amendment was filed on 09.10.2010 that is, even before the issues are framed and before the trial had commenced. The plaintiff was attempting to therefore bring amendment; (i) to rectify a clerical error and (ii) to incorporate a reference to an earlier document which was being sued upon. The defence was that one of the parties to the earlier agreement was not even a party in the subsequent document and therefore, this fact cannot be pleaded. It was also stated that at the time when the application for amendment was made on 09.10.2010 more than three years had elapsed from the first document dated 16.12.2005 and therefore, the claim with reference to enforcement of rights under earlier document was barred by limitation. It was also contention of defendants that the amendment was brought with reference to facts which were clearly within the knowledge of the plaintiff and therefore, by the amending provisions of Order 6 Rule 17 CPC, the amendment cannot be brought.

3. The Court below had accepted the contention and dismissed

the petition for amendment. It appears that there was also yet another application filed for amendment at the instance of person who claimed as an assignee from the plaintiff and sought for impleadment to bring amendment incorporating all these details which were denied in the earlier application. When that application for amendment was allowed to provide for an impleadment of the assignee of plaintiff's interest, the defendant has come on revision in C.R. No.458 of 2013.

4. If there was a clerical error in referring to khasra numbers and it was sought for correction, no objection could be taken. It is again incorrect to contend that the plaintiff was suing for an enforcement of the document dated 16.12.2005. The agreement that is sought to be enforced must be taken only as for the document dated 09.04.2007 and to the extent to which the reference in document dated 16.12.2008 was incorporated in the subsequent document dated 09.04.2007, it would obtain enforcement to that extent only and not beyond that. If it were to be contended that right of enforcement under document dated 16.12.2005 cannot be enforced or that one of the parties to the said document was not party in the subsequent document and therefore, the enforcement as sought for is not valid, it will be open for the defendants to invoke a plea of limitation. The inclusion of the prayer for amendment ought not to be taken as relieving an obligation of the plaintiff to establish his own case that the relief claimed in suit was permissible and it was within the period of limitation. The Court has power to determine the issues of limitation even without express pleadings by virtue of Section 3 of the Limitation Act.

5. If the assignee has been allowed to be impleaded, it was

perfectly justified and I will find no reason for interfering with the order already passed. The order which is set to challenge in C.R. No.1478 of 2012 is set aside and the civil revision in C.R. No.1478 of 2012 is allowed. The order which is subject matter of challenge in C.R. No.458 of 2013 is sustained and the civil revision in C.R. No.458 of 2013 is dismissed. No costs.

**(K. KANNAN)
JUDGE**

April 28, 2015
Pankaj*