

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

C.R. No.2832 of 2012

Date of Decision.03.03.2015

Balbir Singh and others

.....Petitioners

Versus

Jaspal son of Sh. Des Raj

.....Respondent

Present: Mr. S.S. Bhinder, Advocate
for the petitioners.

Mr. Amit Jain, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. In a suit for rescission of a contract filed by the plaintiff for an agreement which was executed on 13.04.2005, the application for amendment for specific performance of the contract made on 23.01.2012 has been ordered and the revision petition is against such order.

2. Learned counsel appearing on behalf of the petitioner would contend that the nature of amendment changes the very character of suit and such an amendment ought not to be allowed. The petitioner would also point out to the fact that the period of execution of the sale under the agreement was 31.05.2006 and the suit had been originally filed on 29.05.2009. The application for specific performance would be barred by law in terms of Article 54 of the Limitation Act and therefore, an application for amendment to the plaint would also be equally barred.

3. Learned counsel appearing on behalf of the respondent would point out that the suit for rescission of contract had been filed on a plea

that the sons were also making claims to the property and it was not possible to secure the same from the father who had been the executant of the document. However, in the course of the pleadings the defendant had taken a contention that the property belonged only to him and not the sons and when an application was filed for framing additional issues by the plaintiff, the defendant came with objection to the application that reads as follows:-

“.....The sons of defendants never raised any objection against the execution and registration of sale deed by the defendants in favour of plaintiff as alleged, rather the plaintiffs are still ready to get the sale deed executed and registered in favour of plaintiff and to deliver vacant possession of the same if the plaintiff is ready to make the payment of balance amount of sale consideration but however the plaintiff is not entitled to the refund of any amount from defendants....”

This reply filed was in Court on 16.05.2011. The application for amendment is brought on the basis of the contention raised by the defendant that he is ready and willing to get the sale deed executed and registered in favour of the plaintiff and deliver possession of the same. The cause of action for the amendment itself is a willingness on the part of the defendant expressed through the reply that he would execute the sale deed if the plaintiff pays the balance of sale consideration.

4. There are two options open. The plaintiff can have the suit withdrawn and prosecute a fresh suit on the basis of an undertaking given by the defendant that he will execute the sale deed. The other alternative is to seek for amendment of the plaint to point out the pleadings in the reply given by the defendant offering to sell the property as constituting an admission on his part to execute the sale deed and seek for its enforcement in the plaint which is already filed. Amendment to

pleadings are permitted in cases where serious prejudice would not be caused and the amendment can quell multiplicity of proceedings. If separate suit could be maintained on an undertaking given by the defendant to execute a sale, if the sale consideration is paid, then that cause of action would allow for the plaintiff to make an amendment and cite the reply given by the defendant as giving him the right to seek for its enforcement. An agreement does not require to be written and if there is agreement already in writing and there is oral undertaking given subsequently even beyond the limitation to sell the property, that statement will be taken as a ground for bringing an amendment. I will, therefore, not find that there is any prejudice that can fetter the plaintiff from bringing any enforcement to the contract. However, the plaintiff would contend that price of the property had gone several times fold and the sale cannot be executed in the very same price. By an amendment the suit cannot be taken as decreed already. The defendant will have an opportunity to file his additional written statement on the basis of the averments made in the amending pleadings and the additional statement will confine itself to the additional pleadings brought by the plaintiff through the amendment.

5. With this liberty the revision petition is dismissed affirming the order already passed by the Court below.

(K. KANNAN)
JUDGE

March 03, 2015
Pankaj*