

CR-3422-2014

Date of Decision : 09.03.2015

PAWAN KUMAR GARG

..... Petitioner

Versus

HARBANS SINGH & ORS

..... Respondents

CORAM HON'BLE MR. JUSTICE K.KANNAN

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present: Mr. Sunil Panwar, Advocate for the petitioner.

Mr. Saurabh Arora, Advocate
for respondents No.1 to 4.K.Kannan, J (Oral)

The revision petition is against the application allowing the amendments sought by the plaintiff in a suit for specific performance. The document which was sought to be enforced was an agreement executed by the first defendant on 16.01.2004 that required the performance to be before 22.07.2005. The suit was filed on 27.02.2006 against the vendor. The subsequent alienees were impleaded as parties on 26.04.2012 on their own applications. The plaintiff had sought for amendment on two aspects, one, inclusion of averments regarding readiness and willingness as mandatorily to be stated as per requirements of Section 16(c) of the Specific Relief Act. Two, to seek to contend that the sale deeds in favour of the subsequent alienees were not true. These applications were filed beyond the period of 3 years from the last date mentioned for performance. The objection, therefore, was that the amendment

application was barred by time and hence could not have been allowed. The counsel has also placed reliance on judgments that have made issue of limitation relevant for consideration on applications for amendment.

I find that there is no merit at all in the revision petition challenging the order allowing the amendment. Article 54 of the Specific Relief Act stipulates a period of 3 years for filing the suit for a claim of specific performance from the time of the period prescribed for performance. If the last date for performance was 22.07.2005, a suit for specific performance filed within the period of 3 years was within time. The requirement of readiness and willingness which is statutorily mandated under Section 16(c) has been observed in several judgments as an issue for adjudication in every suit for specific performance, whether there is any plea in that regard or not. This is so, because the relief for specific performance itself was originally in the realm of equity jurisdiction in English Courts and the Indian statute that provided for enforcement still made the discretion of the Court relevant by enacting a special provision under Section 20 requiring the Court to see whether the discretion could be exercised in favour of the plaintiff and also enacting that it shall not be necessary to order specific performance merely because it shall be lawful to do so. The requirement of examination of whether the plaintiff is ready and willing is also a plea which the plaintiff is required to make, for, an adjudication in that regard is necessary whether there is even a plea or not. The absence of plea by the plaintiff would have certainly resulted in great prejudice and if it was being incorporated, it ought not to be taken merely as a cosmetic exercise. The Court will examine whether the plaintiff has actually proved his readiness and willingness.

That shall be done at the time of trial when evidence is led as regards readiness and willingness. All that Article 54 requires is that the substantial prayer for specific performance and the institution of suit should have been within the period of limitation. If the suit was within time, an averment expressing readiness and willingness cannot be thrown out on the issue of limitation. In Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar (1990) 1, SCC 166, the Supreme Court has observed that an application for amendment of the plaint, in a suit for specific performance of the contract, is made to introduce the averment that as to the readiness and willingness of the plaintiff that there is no fresh cause of action sought to be introduced by such amendment. All that the plaintiff seeks to do is to complete the cause of action for specific performance for which relief he had already prayed. By such amendment, only an error probably on account of some oversight or mistake of the draftsman, of the plaint of not making the averment required to be made by Section 16(C), is sought to be rectified, and no injustice is caused to the other side by allowing such amendment.

Even a plea that the plaintiff has sought for setting aside the sale beyond a period of limitation has no meaning, since such a prayer is an unnecessary surplusage. Section 19 of the Specific Relief Act enjoins that every plaintiff suing for specific performance shall implead the subsequent purchaser in order that he gets a binding declaration. All that is necessary for the plaintiff is to secure a finding that the subsequent purchase was not bona fide and without notice of the earlier agreement of sale. The Court that grants specific performance is bound to examine whether the subsequent purchaser has established the bona fides of his purchase and the fact that he had no knowledge of the agreement of sale. The burden of proof is on the

purchaser attempting to show the document to stand even against the claim for specific performance. In such a suit the truth of sale is not a point in issue; on the other hand, it is the bona fides of purchase and the knowledge or otherwise of the subsequent purchaser about the anterior agreement of sale. The Court that grants a decree for specific performance invalidates a subsequent purchase only on findings regarding the purchaser's bona fides and knowledge and not merely on passing of consideration or whether any vitiating circumstances existed or not. If the plaintiff has, therefore, sought a relief that the sales in favour of defendants are not valid, he was doing so against the defendants who have willingly brought themselves on record even before the filing of the amendment application.

The decision relied on by the counsel do not address issues of incorporation of relief of readiness or willingness or the need to secure a finding in the manner under Section 19 requires. I will not therefore, find any need for reproducing the judgments and I find them as totally incongruous for being cited.

I affirm the findings of the trial Court and dismiss the civil revision petition.

(K. KANNAN)
JUDGE

March 09, 2015
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