

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5315 of 2015
Date of decision : August 20, 2015

Satnam Singh and others

..... Petitioners

Versus

Dev Kaur

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay Lath, Advocate
for the petitioners.

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 order dated 16.7.2015 whereby the application filed by the respondents-plaintiffs seeking amendment of the plaint has been allowed.

Learned counsel for the petitioner-defendant submits that the amendment sought was to incorporate in the plaint the relief of recovery on the premise that owing to typographical mistake to claim a refund of ₹6,50,000/- instead of ₹5,50,000/-. He further submits that this application has been filed beyond three years and therefore, the trial court has committed illegality, much less perversity, in allowing the application at the fag end of the suit. In support of his contentions, he has relied on the judgments in **Raghvir**

Parshad etc. Vs. Chet Ram 1973 (2) ILR (Punjab)323, Vikram Singh Mehta Vs. M/s Bajaj Auto Ltd. 2001 (2) RCR (Civil) 434, Subramanian Vs. Aboobacker Koya 2004 (2) RCR (Civil) 423 and The State of Rajasthan and others Vs. Rao Dhir Singh and others AIR 1972 Rajasthan 241 (V.59 C 65).

I have heard learned counsel for the petitioner-defendant and appraised the paper book.

The amendment sought by the respondent-plaintiff reads thus:-

“a. Adding para “In alternative suit for recovery of balance sale consideration of Rs.5,50,000/- from the defendant no.1” in the end of head note and prayer clause of the plaint.

b. And adding para no.8A in the plaint which is to be read as under; “That if this Hon'ble Court due to some technical reasons does not decree the relief of setting aside of sale deed then in the alternative the suit may kindly be treated for alternative relief of recovery of balance sale consideration of Rs. 5,50,000/-.”

c. For substituting amount and entering amount 5,50,000/- in place of already mentioned 6,50,000/- (Rs. Six lakh fifty thousands) as already mentioned in the para no.4, 5 and 9.”

The suit instituted at the instance of the plaintiff-respondent is for declaration that plaintiff is owner in possession of ½

share out of total land measuring 10 Kanals and 9 Marlas and for declaration to the effect that sale deed dated 8.7.2011 is illegal, null, void ab-initio and in-operative as same had been executed by defendant No.1 in connivance with defendant Nos. 2 and 3 from the plaintiff by playing fraud, misrepresentation, concealment, deception and further the plaintiff had sought that in case the court finds that the relief sought in the main suit is not being granted then an alternative prayer is sought to be added.

It is a settled law that for proving fraud and misrepresentation there has to be specific pleading, much less evidence in this regard only then plaintiff would succeed in getting a relief. The impugned order would not affect the right of the petitioner-defendant as he would be at liberty to take the objection for incorporating the relief in the plaint by taking aid of Section 3 of the Limitation Act. The language of Section 3 leaves no manner of doubt that the question of limitation can be raised at any stage even if, there is no issue, or any objection has not been taken in the plaint.

There is no dispute to the ratio decidendi culled out in the judgments cited above. There had been consistency in law that the amendment would not relate back to the date of filing of the suit . But when the amendment is sought after expiry of three years, then amendment had to be taken into consideration from that date and it would not relate to filing of the suit. It is made clear that in case the petitioner is able to prove the alleged claim itself was beyond limitation, it shall be treated from the date of allowing the application not from filing of the suit.

In my view, the impugned order does not suffer from any illegality and infirmity in the revision jurisdiction in terms of the observations made hereinabove.

It is made clear that the petitioner-defendant shall be at liberty to take the objections as per provisions of Section 3 of the Limitation Act.

There is no merit in the revision petition. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 20, 2015
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