

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.5982 of 2015(O&M).

Date of Decision: 14.09.2015.

Ali Mohd.

....Petitioner.

VERSUS

Kabir and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rakesh Dhiman, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this petition under Article 227 of Constitution of India, petitioner has sought setting aside the order dated 17.07.2015 passed by Civil Judge (Junior Division), Mewat whereby application filed by the plaintiff-petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short, “the Code”) was dismissed.

The petitioner filed a suit for declaration with consequential relief of permanent injunction alleging that a co-villager of his brother-in-law Norang (sister's husband) had executed an agreement of sale dated 20.06.1995 in his favour in respect of land measuring 82 Kanals 4 Marlas situated in the revenue estate of village Ranika Malab for a consideration of Rs.4,25,000/-. Out of sale consideration, Rs.1 lac was paid by him as

earnest money and the balance amount was to be paid on the targeted date i.e. 20.06.1996. Subsequently, in December, 2011 he came to know that his brother-in-law Norang (since deceased) and his sons (defendants-respondents No.1 and 2) had played fraud with him in collusion with the vendor, document writer and the witnesses to the sale deed and had got executed the sale deeds in their favour. He challenged the sale deeds and the revenue entries recorded on the basis of the sale deeds as illegal, null and void and not binding on his rights.

Respondents-defendants No.1 and 2 as well as the second set of defendants, who were subsequent purchasers from Norang and defendants No.1 and 2 appeared and contested the suit on various legal and factual grounds. Issues were framed on the rival contentions of the parties and they were called upon to adduce evidence. After the petitioner-plaintiff stepped into the witness box and made statement in the shape of an affidavit, but before he could be cross examined, he moved an application under Order 6 Rule 17 read with Section 151 of the Code for inserting an alternative relief of claiming specific performance of the agreement of sale by way of amendment. The application was opposed by the opposite side and considering the submissions made on behalf of the parties, the application was dismissed by learned trial Court vide order dated 17.07.2015.

Aggrieved by the impugned order, the petitioner has preferred the instant revision petition.

The submissions made by Mr. Rakesh Dhiman, learned counsel

representing the petitioner have been considered.

Learned counsel for the petitioner argued that the purpose of allowing an amendment in pleadings is to minimize the litigation and to effectively adjudicate upon the controversy between the parties. The petitioner by way of proposed amendment intends to claim an alternative relief of specific performance of the contract and also for recovery of the amount paid as an earnest money. That will neither change the nature of the suit nor will change the cause of action already pleaded. Learned counsel contended that the trial Court had dismissed the application for amendment of the plaint mainly on the ground that the relief being sought by the petitioner had become barred by limitation. The plea that the relief claimed was barred by limitation was arguable in the light of facts and circumstances of the case. The amendment sought could not be declined for the reason that the relief sought to be introduced would be barred by limitation.

Admittedly, by way of the suit filed by the petitioner, he had sought a declaration to the effect that sale deeds dated 20.06.1996 and 21.06.1996 executed in favour of Norang and his sons (defendants No.1 and 2) as well as all subsequent sale deeds and the revenue entries based on the same are illegal, null and void and not binding on his rights. He pleaded that his brother-in-law Norang in collusion with others had played fraud upon him and got the registered sale deeds executed in their favour whereas the sale deeds were supposed to be executed in his favour on the basis of the agreement of sale dated 20.06.1995. Particulars of fraud, as per his

version, were pleaded by him. Having pleaded facts of fraud, relating to execution of sale deeds regarding the land that was subject matter of his agreement of sale, his plea of alternative relief of specific performance of the contract is not tenable. Moreso, as per his own version, the sale deed was to be executed on or before 20.06.1996 whereas this civil suit challenging the sale deeds executed after the agreement of sale in favour are dated 20.06.1996 and 21.06.1996. The proposed amendment will apparently change the very nature of the suit. From a suit for declaration with consequential relief of permanent injunction, he intends to convert the same into a suit for specific performance that too impleading the persons who were not party to the sale transaction.

Learned trial Court rightly dismissed the application for amendment of the plaint relying upon the proposition of law laid down by Hon'ble Supreme Court in Vijendra Kumar Goel vs. Kusum Bhuwania, 1997(11) S.C.C. 457 whereby it was held that amendment of pleadings resulting in conversion of the suit from a suit for declaration and injunction into a suit for specific performance that too when the claim of specific performance had become barred by limitation, was not permissible under law. In M/s. Virgo Industries (Eng.) P. Ltd. Versus M/s. Venturetech Solutions P. Ltd., 2012(4) R.C.R. (Civil) 372 it has been held by Hon'ble Supreme Court that when at the time of filing of the suit, it was well within the knowledge of the plaintiff that the defendants were not inclined to honour the transaction of sale, yet he opted to file a simple suit for declaration, he is not entitled to amend the pleadings and convert the suit

into a suit for specific performance. In the case in hand, the targeted date for execution of sale deed had expired almost 12 years prior to institution of the suit.

Thus, finding no illegality or perversity in the order of learned trial Court calling for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

14.09.2015.
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