

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

C. R No. 7538 of 2013 (O&M)

Date of decision : 07.12.2015

Prem Kumari

....Petitioner

versus

Shashi Gupta

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Garg, Advocate
for the petitioner.

Mr. C.M. Munjal, Advocate
for the respondent.

RITU BAHRI , J.

Challenge in this petition is to order dated 22.10.2013 passed by learned Civil Judge (Jr. Divn.), Gurgaon, vide which the joint application of the plaintiff/respondent under Order 1 Rule 10 CPC and Order 6 Rule 17 read with Section 151 CPC, has been allowed

Plaintiff/Respondent filed a suit for permanent injunction that she is owner in possession of residential plot No. 82-G, measuring 502 sq yards situated in Part 1, Phase 1 of Saraswati Kunj Co-op House Building So. Ltd., village Wazirabad, Tehsil and Distt. Gurgaon and the same was allotted to her by Society on depositing of full and final consideration, vide registered sale deed bearing vasika No. 4477 dated 28.06.2001 and the

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possession of the same was delivered to her on 15.12.2003. However, the sale deed was not executed and as per the case of the respondent, petitioner tried to take forcible possession of the said plot. Hence, the suit. Defendant/Petitioner filed its written statement on 15.11.2007 claiming that the suit is bad for mis-joinder of necessary party i.e M/s Saraswati Kunj Co-op Housing Society as well as Administrator, appointed by the Government of Haryana.

The learned Court below allowed the application of the respondent, as the suit was at the initial stage and on the ground that in the written statement filed by the petitioner, the objection had been taken by the petitioner with regard to non-joining of necessary parties.

Learned counsel for the petitioner submits that the applications should not have been allowed as the sale deed was dated 28.06.2001 and the suit was filed on 26.02.2007 and thus, the suit was barred by law of limitation.

This aspect has been considered by Hon'ble the Supreme Court of India in a case of ***Laxmidas Dayabhai Kabrawala vs. Nanabhai Chunni Lal Kabrawala AIR 1964*** wherein it has been held as under:-

“It is no doubt, true that save in exceptional cases, leave to amend under O. 6 Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a part a legal right which had accrued to him by lapse of time.

But his rule can apply only when fresh allegations are added or

fresh reliefs sought by way of amendment. Where for instance, an amendment is sought which merely clarified an existing pleading and does not in substance add to or alter it, it had never been held that the question of bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleadings.”

The trial Court has allowed the application on the ground that the question of limitation is a mixed question of law and facts and the same can only be decided after the parties adduced their evidence in this regard.

In view of the above, the present revision petition is disposed of by observing that the petitioner shall have the liberty to file the amended written statement to amended plaint.

07.12.2015

G.Arora

(RITU BAHRI)
JUDGE