

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

**CR No. 7944 of 2013 (O&M)  
Date of decision: 01.12.2015**

M/s DLF Home Developers Limited

... Petitioner

versus

State of Haryana and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Harsh Bunker, Advocate for the petitioner.

Mr. Saurabh Mohunta, Addl. Advocate General, Haryana.

**K.Kannan, J.**

The 5<sup>th</sup> defendant who filed an application for rejection of plaint on the ground that the suit is barred by law. The relief claimed in suit was that he should be declared to be owner in possession of the property mentioned in para No.2 namely 1/15<sup>th</sup> share measuring 1 *biswa* 6 *biswani* 0-1-6 in Khasra Nos. 451 and 452 on the basis that his vendor sold the property as an undivided land comprised in Khasra Nos. 451 and 452 to an extent of 0/8/0 and 0/12/0 respectively aggregating to 1 *bigha*. The contention of the plaintiff was that he came to know that there had been partition proceedings between his vendor and the 5<sup>th</sup> defendant only in the last week of year 2007 and separate specific item of property has been given to his vendor was wrongly incorporated. The challenge in the suit is that the proceedings have been taken without notice to the plaintiff. The 5<sup>th</sup> defendant's contention was that the partition had been made in the year 1989 and mutation had also taken place which spelt out specific extent namely, 451 (0-8-0) and 452/1 (0-11-0) and the plaintiff vendor had been allotted 452/2(0-1-0). If according to the plaintiff, he came to know about the partition proceedings only in July 2007, the suit challenging

such a partition by a suit instituted on 04.08.2010 will be barred by limitation. The basis for challenge in the suit was non-issuance of notice prior to the orders in partition was absurd since the plaintiff had himself not purchased the property at that time and his own purchase had been affected only on 03.03.2008

The plaint, if read as a whole and taken to be correct cannot be supported, for, the plaintiff could not have had notice prior to its purchase and even a challenge to the partition brought about between the 5<sup>th</sup> defendant and the plaintiff's vendor cannot be reopened at the instance of the plaintiff without proof of any vitiating circumstance that can imperil the validity.

Admittedly, the plaintiff's vendor had himself not brought about any such action and the proper remedy could have been only against his own vendor, if there had been any misrepresentation practiced by the vendor against the plaintiff. There was simply no cause of action against the 5<sup>th</sup> defendant who had secured to itself a separate partition through proceedings that were taken in accordance with law.

The objection regarding the plaintiff's suit was well-founded and the plaint ought to have been ordered to be rejected. The impugned order is set aside and the revision petition is allowed with cost of Rs. 3,500/- against the 5<sup>th</sup> respondent-plaintiff.

**(K.KANNAN)**  
**JUDGE**

01.12.2015  
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