

In the High Court of Punjab and Haryana at Chandigarh

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CR-8224-2015 (O&M)

Date of decision: 11.12.2015

MAHABIR AND ANR

..... Petitioners

Versus

M/S GFROW BUILDTECH PVT LTD AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.R.K.Dhiman, 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?**

Raj Mohan Singh, J.

1. Petitioners have assailed the order dated 28.5.2015 passed by Civil Judge (Jr.Divn.) Sohana, vide which application under Order 6 Rule 17 of CPC filed by the plaintiff has been allowed for amendment of the plaint.

2. Plaintiff sought to amend headnote as well as para Nos. 5-A and 9 of the plaint to convert the suit of permanent injunction into specific performance on the ground that agreement to sell was executed between the parties on 31.5.2012 and target date for execution of sale deed was fixed as 31.5.2013. Suit for permanent injunction was filed on

21.1.2013 i.e. prior to the target date for execution of the sale deed and at that time relief of specific performance of agreement to sell was not available and only a suit for permanent injunction was maintainable in view of threat perception caused to the plaintiff. After passing of the target date, a relief for specific performance has become available to the plaintiff, therefore, application for amendment has been moved on 20.3.2014.

3. Learned counsel for the petitioner has contended that the suit for specific performance is not maintainable as the cause of action does not arise in amending a previously instituted suit, rather plaintiff could have filed independent suit in which the contesting defendants would have taken all available pleas to them.

4. Apparently, the cause of action was not available to the plaintiff for filing a suit for specific performance as on the date of filing of suit for permanent injunction, target date for execution of sale deed had not passed. Therefore, suit for permanent injunction was maintainable at the relevant time. It is only when target date for execution of sale deed lapsed, the cause of action for filing suit for specific performance has become available to the plaintiff. Since suit for permanent injunction is already pending on the subject matter arising out of agreement to sell, therefore, amendment in question would

suffice to serve all the legal criteria. The suit is not barred under Order 2 Rule 2 of CPC by any stretch of imagination. The contention of learned counsel for the petitioner is that Dhani Ram had already expired and his legal representatives have not been brought on record. However, the date of death of Dhani Ram is conspicuously missing. The legal representatives of Dhani Ram are equally responsible for bringing themselves on record. Moreover, Dhani Ram is real brother of petitioners and respondents No.3 to 5 and son of respondent No.6.

4. Having considered the controversy involved in the present case, I am of the opinion that there is no illegality and jurisdictional error in the impugned order passed by the trial Court. Consequently, the revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 11, 2015
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