

CR No.845 of 2015

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

CR No.845 of 2015

Date of decision:09.02.2015

M/s Gurkirat Promoters and Developers Private Limited ...Petitioner

Versus

Om Parkash and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sudhir Hooda, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for converting the suit for mandatory injunction in a suit for specific performance has been declined by the impugned order.

In brief, the petitioner filed a suit for mandatory injunction seeking direction against the respondents to execute and register the sale deed in her favour as per the agreement to sell. On an objection raised by the defendants that the suit has been filed without affixing the *ad valorem* court fee, the petitioner affixed the *ad valorem* court fee but it is alleged that inadvertently, the suit was drafted for mandatory injunction instead of specific performance, therefore, the application was filed for seeking amendment of the plaint for specific performance of the agreement to sell.

The application has been dismissed by the learned Court below on the ground that the issues were framed on 07.04.2011 and since the case

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is fixed for plaintiff's evidence, therefore, the trial has commenced and in the absence of due diligence, the amendment cannot be allowed.

Learned counsel for the petitioner has submitted that the amendment is being sought only to seek relief of specific performance of the agreement to sell which would not create any change in the suit as the court fees has already been paid during its pendency.

I have heard learned counsel for the petitioner and examined the available record.

The agreement was alleged to have been entered into between the parties on 20.02.2006 and the sale deed was to be executed upto 30.08.2006. The petitioner was allegedly present before the Sub Registrar for the registration of the sale deed on 30.08.2006 and also moved an application for recording his presence but the defendants did not turn up, therefore, the suit for mandatory injunction was filed seeking a direction to the defendants to execute the sale deed or refund the double of the earnest money.

In the plaint, the cause of action has been shown to have accrued to the plaintiff-petitioner on the date when the agreement to sell was executed i.e. 20.02.2006 and lastly on 30.05.2008 when the defendants flatly refused to execute the sale deed. The suit was thus filed on 18.02.2009.

As per Article 54 of the Limitation Act, 1963, the suit for specific performance can be filed within a period of 3 years. The cause of action to file such a suit accrued to the petitioner on the date fixed for

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execution and registration of the sale deed i.e. 30.08.2006 and lastly when the defendants flatly refused to execute the sale deed i.e. on 30.05.2008. The limitation has thus to be counted at the most from 30.05.2008 which expired on 30.05.2011 for the purpose of filing the suit for specific performance. The petitioner thus, at this stage after the expiry of 3 years, cannot be allowed to convert the suit for mandatory injunction in a suit for specific performance because if he had to withdraw the suit filed for mandatory injunction, he cannot file the suit for specific performance as it has already become barred by limitation.

The Supreme Court in the cases of **Ashutosh Chaturvedi v. Prano Devi @ Parani Devi and others**, 2008 AIR (SC) 2171 and **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by LRs.**, 2008(3) R.C.R. (Civil) 165 has held that the amendment can be allowed if it is not working injustice to the other party and the suit itself is not barred by limitation.

In the present case, however, with the amendment of the plaint at the stage when the limitation for filing the suit for specific performance has already expired, the suit for mandatory injunction cannot be converted in the suit for specific performance.

Consequently, I do not find any merit in the present revision petition and hence, the same is hereby dismissed.

February 09, 2015
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(**Rakesh Kumar Jain**)
Judge