

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.818 of 2015**

Arjun Das Bajaj S/o Sheetal Das Bajaj, Aged about 47 years, R/o Village & Tahsil-Belha, District Bilaspur (CG)

---- Petitioner**Versus**

1. Abdul Halim Khan s/o Late Shri Abdul Hakim Khan, Aged about 47 years, R/o Akbar Khan Ki Choul, Idgaha Chowk, Bilaspur (CG) 495001
2. Ram Awatar Brijvasi S/o Late Shri Bhuvanlal, Aged about 57 years,
3. Tadkeshwar Brijvasi S/o Ram Awtar Brijvasi, Aged about 24 years,
4. Puneshwar Brijvasi S/o Ram Awtar Brijvasi, Aged about 21 years,

Respondent No.2 to 4 are residents of Shivrath Marg, Jarhabhata, Bilaspur, Tahsil & District-Bilaspur (CG) 495001

5. State of Chhattisgarh, Through-the District Collector, Bilaspur, Tahsil & District Bilaspur (CG)

---- Respondents

 For Petitioner : Mr.Sudeep Verma, Advocate
 For Respondent No.1 : Mr.Manoj Paranjape, Advocate
 For Res.No.2 to 4 : Mr.Govind Ram Miri, Advocate
 For Respondent No.5 : Mr.Gary Mukhopadhyay, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****07/11/2016**

1. The petitioner/plaintiff filed a suit for declaration of title and permanent injunction on 22.12.2006 stating inter-alia that defendant No.1 has entered into agreement to sell on 29.4.1992 with the plaintiff and delivered possession of the suit land and since then, he is in peaceful possession of the

suit land and sought only relief of declaration of title and permanent injunction, in which defendant No.1 has filed his written statement on 10.11.2014, issues were framed on 4.3.2015 and the plaintiff filed his affidavit under Order 18 Rule 4 of the CPC on 12.4.2015. Thereafter application for amendment was filed on 16.4.2015, seeking leave to insert relief of specific performance of contract was sought. In the application under Order 6 Rule 17 of the CPC, the plaintiff has also pleaded that defendant No.1 has refused to execute sale deed lastly on 15.4.2006.

2. By the impugned order dated 4.8.2015, the trial Court has rejected the application holding that proposed amendment changes the nature of suit.

3. Feeling aggrieved against the order rejecting application for amendment, this writ petition under Article 227 of the Constitution of India has been filed.

4. Mr.Sudeep Verma, learned counsel appearing for the petitioner, would submit that proposed amendment is necessary for just and proper disposal of the suit and to decide the real controversy which has arisen after filing of the written statement by defendant No.1 on 10.11.2014 and other relief is also necessary in the interest of justice. He would further submit that proposed amendment would avoid the multiplicity of the litigation and as such, the order impugned deserves to be set aside.

5. Mr. Manoj Paranjape, learned counsel appearing for respondent No.1, would submit that the trial has already been commenced as affidavit under Order 18 Rule 4 of the CPC was filed by the plaintiff on 12.4.2015 and proviso to Order 6 Rule 17 of the CPC is mandatory in nature and therefore, amendment is hit by proviso to Order 6 Rule 17 of the CPC. He would rely upon the judgment of the Supreme Court in the matters of **Vidyabai and others vs. Padmalatha and another**¹ and **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others**² and would also submit that the plaintiff has initially only claimed relief of declaration of title and permanent injunction and way of of amendment seeks to amend and claim specific performance of contract, which is clearly impermissible in law.

6. I have heard learned counsel appearing for the parties, perused the order impugned and documents appended with the writ petition.

7. The question for consideration would be whether suit for declaration of title and permanent injunction, the relief of specific performance of the contract can be inserted by way of amendment.

8. In the matter of **K. Raheja Constructions Ltd. and another v. Alliance Ministries and others**³, the Supreme Court has held that application under Order 6 Rule 17 of the

¹ (2009) 2 SCC 409

² (2009) 10 SCC 84

³ 1995 Supp (3) SCC 17

CPC filed belatedly after filing of the suit seeking to amend the plaint for specific performance of contract cannot be granted on the ground of limitation. It was observed as under:-

“4.The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent.”

9. Similar is a proposition laid down by Supreme Court in the matter of **Tarlok Singh v. Vijay Kumar Sabharwal**⁴, in which it has been held that on the date of granting the amendment, if the suit is barred by limitation than the relief of specific performance cannot be granted. It was held as under:-

“6.In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on 6-4-1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated 25-8-1989, the suit must be deemed to have been instituted on 25-8-1989 and the suit was clearly barred by limitation. We find force in the stand of the appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from 6-4-1986. Suit merely for injunction laid on 23-12-1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by

⁴ (1996) 8 SCC 367

way of amendment application filed under Order 6 Rule 17 CPC on 12-9-1979. It will operate only on the application being ordered. Since the amendment was ordered on 25-8-1989 the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit.”

10. Likewise, in the matter of **Virendra Kumar Goyal v. Kusum Bhuwania**⁵ the Supreme Court has clearly held that amendment of the pleading sought by the plaintiff resulting in conversion of the suit from declaration and injunction to specific performance of the contract cannot be granted if the claim for the specific performance had already become barred by limitation and held as under:-

“4.The suit, as framed, is a suit for declaration and injunction only. It was sought to be converted into a suit for specific performance by the plaintiff-respondent by way of amendment in the plaint in 1993 when the claim for specific performance had become barred by limitation. The submission of Shri Dhavan is that even on the date of the filing of the suit, the claim for specific performance was barred by limitation. We do not propose to go into that question.”

11. In the matter of **Van Vibhag Karmachari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and others**⁶, the Supreme Court has held that amendment seeking to insert relief of specific performance after eleven years of accrual of cause of action which was beyond limitation such an application for amendment cannot be allowed and reiterated the principle of law laid

⁵ (1997) 11 SCC 457

⁶ (2010) 14 SCC 596

down by Supreme Court in **K. Raheja Constructions Ltd**

(supra) and held as under:-

“32. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar v. Laxminarayan*⁷, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case.”

12. Very recently, in the matter of **L.C.Hanumanthappa through LRs. v. H. B. Shivakumar**⁸, the Supreme Court has held that if the relief of specific performance of the contract has barred by limitation on the date of grant of amendment, such a relief cannot be added. It was further held that doctrine of relation back would not be applicable:-

“29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff’s title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written

⁷ (2001) 6 SCC 163

⁸ (2016) 1 SCC 332

statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.*⁹, the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the *impugned judgment*¹⁰ of the High Court. The present appeal is accordingly dismissed."

13. In the case in hand, the petitioner/plaintiff filed a suit for declaration of title and permanent injunction on 22.12.2006 stating *inter alia* that defendant No.1 has entered into agreement to sell on 29.04.1992 and delivered a possession of the suit land and since then, he is in peaceful possession of the suit land and sought only relief of declaration of title and permanent injunction, in which defendant No.1 has filed his written statement on 10.11.2014, issues were framed on 04.03.2015 and the plaintiff filed his affidavit under Order 18 Rule 4 of the CPC on 12.04.2015. Thereafter, application for amendment was filed on 16.04.2015 and by way of

⁹ (2011) 9 SCC 126
¹⁰ 2015 SCC OnLine Kar 3860

amendment, relief of specific performance of contract was made. In the application under Order 6 Rule 17 of the CPC, the plaintiff has also pleaded that defendant No.1 has refused to perform his part of contract by executing sale deed lastly on 15.04.2006. Thus, the agreement to sell is dated 29.04.1992 and according to the plaintiff, the defendant on 15.12.2006 last time has refused to perform his part of contract. Under Article 54 of the Limitation Act, three years period of limitation is prescribed for specific performance of contract and period of three year begins to run the date fixed for performance or if no such date is fixed than from the date when the plaintiff has a notice that performance is refused.

14. In this case, admittedly, performance is refused by defendant as per paragraph seven of the plaint, and on 15.12.2006 and in a suit filed for declaration of title based on adverse possession, further relief for inserting specific performance of the contract was filed on 15.04.2015, which is hopelessly barred by limitation, therefore the trial court is absolutely justified in holding that suit for declaration of title and permanent injunction cannot be converted into suit for specific performance of contract as the relief of specific performance of contract has become barred by limitation in the light of principle of law laid down by the Supreme Court in the above-stated judgments.

15. There is an additional reason for not upholding the impugned order. In the suit, affidavit under Order 18 Rule 4 of the CPC was filed on 12.11.2013 by the plaintiff and thereby trial has already been commenced. Proviso to Order 6 Rule 17 of the CPC provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial and said proviso has been held to be mandatory by the Supreme Court in the matter of **Vidyabai** (supra). The application for amendment filed seeking leave to amend is blissfully silent as to why the application for amendment was not filed before commencement of trial.

16. As fallout and consequence of the aforesaid discussion, it is held that the trial Court is absolutely justified in rejecting the application for amendment filed by the plaintiff. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-