

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

CR No.1292 of 2016(O&M)

Date of decision: 11.03.2016

Rajeev Sharma and others

..... Petitioners-defendants.

Versus

M/s Vivek Prints

.....Respondent-plaintiff.

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sharad Mehra, Advocate
for the petitioners.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred by the petitioners-defendants against the order dated 10.09.2015, passed by the learned Civil Judge (Jr. Division), Amritsar, vide which the application for recalling the order dated 07.10.2014 has been dismissed and for setting aside the order dated 07.10.2014, vide which the clubbed application under Order 1 Rule 10 and 6 Rule 17 read with Section 151 Code of Civil Procedure, 1908 (for short 'CPC') has been allowed.

2. Learned counsel for the petitioner contended that the amendment sought in the suit qua Jaswant Rai Sharma was barred by limitation. He could not have been added as a

party to the suit nor the amendment sought by the plaintiff in the plaint should have been allowed. He further contended that even the amendments allowed by the learned trial Court have not been carried out in the amended plaint filed in the trial Court. The learned trial Court has also wrongly dismissed the application moved by the petitioner to recall the order dated 07.10.2014. He contended that the fact that the sale deed has been executed by Jaswant Rai Sharma was already in the knowledge of the plaintiffs, which could not have been allowed after the trial has started. Thus, he pleaded that the impugned orders are illegal.

3. I have duly considered the aforesaid contentions.

4. Plaintiff-respondent has filed the suit for declaration to the effect that the sale deed dated 24.08.2004 is null, void and is the result of criminal conspiracy between Jaswant Rai Sharma, the General Power of Attorney of the plaintiff and the defendants, who are none else then his son and daughter-in-law. Learned counsel for the petitioner has mainly assailed the impugned order on the ground that the suit qua Jaswant Rai Sharma was barred by limitation. It is the settled principle of law that the question of limitation is always a mixed question of law and facts. In the plaint, the plaintiff-respondents has categorically pleaded that for the first time he came to know in the month of October, 2007 about the impugned sale deeds when the plaintiff was called by the Income Tax Authorities

and thereafter, the suit was filed on 09.06.2008. The fact pleaded by the plaintiff-respondent with respect to the knowledge of the impugned sale deed is a question of evidence to be determined by the learned trial Court on appreciation of evidence. However, once the suit has been filed to challenge the sale deed, the question of limitation is to be decided as a whole and not qua particular defendant.

5. There are categoric allegations that Jaswant Rai Sharma being the power of attorney of the partner of the plaintiff's firm has executed the impugned sale deed dated 24.08.2004 in favour of his son and daughter-in-law as a result of criminal conspiracy. Categoric allegations have been mentioned against Jaswant Rai Sharma even in the original plaint. So, no new facts have been introduced in the original plaint. The amendment sought by the respondent and impleading Jaswant Rai Sharma was necessary for the purpose of determining the real question in controversy between the parties and presence of Jaswant Rai Sharma before the Court is necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit.

6. Vide second application moved by the petitioner under Order 6 Rule 17 CPC, the amendment has been sought only to correct the date of the impugned sale deed from 12.05.1997 to 24.08.2004, which seems to be a typographic

and inadvertent mistake. The said amendment is not going to cause any prejudice to the petitioners nor will cause any change in the nature of the suit.

7. Thus, I do not find any illegality in the impugned orders calling for any interference by this Court while exercising the supervisory powers under Article 227 of the Constitution of India.

8 Resultantly, the present revision petition having, no merits, is hereby dismissed.

11.03.2016

S.khan

**(DARSHAN SINGH)
JUDGE**