

Civil Revision No.1436 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1436 of 2016

Date of Decision: 19.9.2016

Jagbir Singh @ Rabbi and another

---Petitioners

versus

Avtar Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Swarn Tiwana, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 4.3.2016 passed by the Civil Judge (Junior Division), Fatehgarh Sahib dismissing application of the petitioners for amendment of the plaint filed under Order 6 Rule 17 of the Code of Civil Procedure (in short "CPC").

Counsel for the petitioners has submitted that a suit for declaration was filed claiming joint ownership in possession of land

mentioned at letter X on the basis of agreement dated 25.3.2006 executed by the defendant in favour of the plaintiff and the revenue entries being wrong and liable to be corrected. Further prayer was made for grant of permanent injunction restraining the defendant from alienating the suit property.

The suit was instituted in June 2009. Later, the instant application was filed to delete the claim for declaration and to add the relief of possession by way of specific performance of agreement dated 25.3.2006 on payment of registration and other incidental charges as per terms and conditions of the agreement aforesaid.

After having heard counsel for the petitioners, the application was dismissed by the trial court.

It is vehemently argued that the trial court committed a serious error rather illegality in dismissing the application despite the fact that there was no contest to the application by the respondent/defendant who is ex parte before the trial court.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

The application for amendment in order to convert the suit for declaration to that of possession by way of specific performance of the

agreement was filed in February 2016 and the application is conspicuously silent with regard to cause of action as well as limitation for specific performance of the agreement. Initially, the suit was filed in the year 2009 and the application for amendment has been filed in the year 2016. A suit for specific performance of an agreement can be filed within a period of three years from the date of accrual of cause of action. Counsel for the petitioners is not in a position to say something as to how claim of the petitioners for possession by way of specific performance of agreement by filing an application in the year 2016 qua the agreement dated 25.3.2006 is within limitation.

Hon'ble the Supreme Court of India in ***Revajeetu Builders & Developers vs. Narayanaswamy & Sons and others 2010(1) RCR(Civil) 27*** has culled out certain principles to be taken into consideration for deciding application for amendment of the plaint. In para 67, the Court has held that on critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment. One of the principles at Sr. No. 6 of the aforesaid para reads as follows:-

“As a general rule, the court should decline amendments if a

fresh suit on the amended claims would be barred by limitation on the date of application.”

In sub para 5, it says 'whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case’. The present application filed by the petitioners is clearly hit by the aforesaid two principles, therefore, no error much less illegality can be noticed in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

19.9.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No