

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

CR No. 2085 of 2015 (O&M)

Date of decision: January 22, 2016

Amrik Singh

...Petitioner

Versus

Smt. Shimla Devi and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE K. KANNAN**

- 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?**

Present: Mr. Vikas Kumar, Advocate,  
for the petitioner.

Mr. Paramjit Singh Jammu, Advocate,  
for the respondents.

**K. KANNAN, J. (Oral)**

1. The plaintiff's suit for specific performance for an agreement which was required to be concluded through a sale before 28.12.2009 was filed on 16.3.2010, when the defendants/vendors did not comply with the terms. The statement has been filed taking up several defences and at the time of trial, during the stage of the defendants' evidence the defendant attempted to bring in evidence about a subsequent sale made by him in favour of his brother's wife on 15.12.2009. This evidence was given on 12.11.2014 and soon thereafter the plaintiff has moved an application for amendment seeking for impleadment of the subsequent purchaser. The court has dismissed it and hence the revision by the plaintiff.

2. It is undeniable that in a suit for specific performance a subsequent purchaser is a necessary party to get a binding declaration in terms of Section 19 of the Specific Relief Act. A suit for specific performance is required to be filed within three years from the time when the period for completion of the sale is to expire. Consequently, the suit for specific performance could have been filed to get a binding declaration against the subsequent purchaser also only within a period three years from the time specified i.e. before 28.12.2012. There is no doubt here that the suit was filed without the subsequent alienee who was alienee prior to the suit. There is certainly a ground of limitation which is predominant in this case. In an application for amendment, the Court would invariably mind itself of whether the suit, if it was filed on that date, when the application for amendment was moved, would be within time. On the face of it, the amendment was clearly beyond the time. However, in this case, if it were to be contended that the subsequent purchase itself was not merely bonafide, but it was sham or void by the fact that the subsequent purchaser was a close privy, namely, the vendor's brother's wife, the issue of whether such a purchaser would have protection in the event of proof of the sale not being valid at all would be a mixed question of fact and law. The limitation itself will have a bearing to a sale that would be tested on the bonafide purchase and if the sale is not a sale in the eyes of law when it is sham and nominal, it would be possible for the plaintiff to plead and contend that his own suit will not be so barred.

3. I allow the amendment only subject to limitation and the Court will take the impleadment made by the subsequent purchaser effective only

from the time when the amendment was ordered. The defendant may take such pleas by way of amendment to the written statement or additional statement, as contemplated under Order 8 Rule 9 of the Code of Civil Procedure and restrict such plea only to the amended portion of the plaint, which is now being permitted. The plaintiff is at liberty to recall himself and give evidence on the additional issue which is required to be placed, which I frame as follows:

“Whether the sale by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant (party now impleaded) is true and valid and that further the subsequent purchaser is not bonafide purchaser for value without notice of the agreement? (OPP).

4. Further examination of witnesses of the defendant will continue only after the plaintiff recalls himself, allows the evidence to be given on the amended plaint and then the defendants will resume their evidence.
5. The order already passed is set aside and the revision is allowed subject to the above observations.

**January 22, 2016**  
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**(K. KANNAN)**  
**JUDGE**