

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

CR No.2933 of 2015  
Date of decision : 28.07.2016

Arun Kumar and another

...Petitioners

Versus

Ishro Devi and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Munish Kumar Garg, Advocate for the petitioners.

Mr. N.D. Achint, Advocate for respondent Nos.1 to 7.

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**AMIT RAWAL, J. (Oral)**

The petitioner-plaintiff is aggrieved of the impugned order, whereby application seeking amendment of the plaint by seeking relief of declaration by challenging to the legal notice dated 16.10.2008, whereby the defendant had cancelled the agreement to sell dated 16.08.2008, has been dismissed.

Mr. Munish Kumar Garg, learned counsel appearing on behalf of petitioners-plaintiff submits that in paragraph No.12 of the plaint, there is mention about the aforementioned notices but due to inadvertence, same was not challenged. In order to avoid wrath of technical defect, much less,

implication of the judgment rendered by Hon'ble Supreme Court in *I.S. Sikandar by LRs Vs. K. Subramani and others, 2014(1) RCR (Civil) 236*, amendment aforementioned was sought to be incorporated but the same has been declined on the ground that amendment would not relate back to the filing of the suit i.e. challenge to the document being barred by law of limitation. He submits that there is passing reference in the plaint. Thus, an amendment would not be barred by law of limitation. Moreover, evidence has been led in this regard. No fresh evidence has been led and urges this Court for setting aside of the order under challenge.

Mr. N.D. Achint, learned counsel appearing on behalf of respondent submits that amended application is dated 30.04.2014 by challenging the legal notice dated 16.10.2008 which is ex facie time barred. Amendment cannot be relate back to the filing of the suit and rightly so, the application has been dismissed and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that once plaintiff has undertaken not to lead evidence and there is passing reference of the legal notices in para No.12 of the plaint, which read thus:-

*“12. That thereafter instead of executing the sale deed in favour of the plaintiff the defendants No.1 to 5 by concealing the factum of execution of sale deed by them in favour of defendant No.6 and 7 of the part of land out of land mentioned in para no.2 of the plaint on 16.10.2008 had served a false notice upon the plaintiffs which was duly replied by the plaintiffs. Except to make unwarranted correspondence making false allegations against the*

*plaintiff the defendants no.1 to 5 had failed to perform their own part of contract and had started negotiation to alienate the suit property to the strangers secretly ignoring the rights of plaintiffs. The defendants no.1 to 5 even did not disclosed the pendency of suit against them regarding suit property even in the said unwarranted correspondence.”*

In view of the aforementioned fact, amendment sought to be incorporated would not be barred by law of limitation, for, in not challenging the cancellation of agreement. It would effect the right and claim of the petitioner, much less, may not face the wrath of the objection qua maintainability of the suit in view of the settled law.

For the aforementioned reasons, impugned order is not sustainable and hereby set aside.

Application seeking amendment of plaint is allowed.

Revision petition is allowed subject to cost of ₹5,000/- which shall be condition precedent to be paid to the learned counsel for the respondent-defendant in High Court.

**28.07.2016**

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**(AMIT RAWAL)  
JUDGE**

Whether speaking/reasoned: Yes

Whether reportable:- Yes/No