

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

**CR No. 9 of 2013 (O&M)
Date of decision: 29.01.2016**

Jaswinder Singh and another

... Petitioners

versus

Bhalwinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anupam Singla, Advocate, for the petitioner.

Mr. Abhishek Bhardwaj, Advocate, for

Mr. H.S. Brar, Advocate for the respondent.

K.Kannan, J. (ORAL)

The revision petition is against the order allowing the amendment of the plaint to the suit for specific performance. The agreement of sale was dated 12.07.2005 that was comprised of two specific dates for completion of the sales, one, setting a target date as 10.11.2005 for 10 *biswas* and for the remaining portion of the property of total extent of 23 *bighas* 17 *biswas* that time stipulated was 30.04.2006. The suit was filed by the plaintiff on 13.03.2006 only for specific enforcement of portion of the property of 10 *biswas* for which the time for performance was stipulated as 10.11.2005. There was a specific averment in the plaint that the plaintiff would resort to a separate action for enforcement of the remaining part of the contract as regards the balance of extent. If there was such an occasion to compel the defendant and the said relief was not being asked for in the suit filed on 13.03.2006 only because the relief would be considered as premature, the amendment shall be still within time. For the suit filed on 13.03.2006 the written statement has been filed on 17.05.2006

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setting out several objections including the reference to the fact that the plaintiff had not sought for performance of the contract in full. The plaintiff has moved an application for amendment to the plaint for the remaining portion of the property through an application filed on 03.11.2012. The application was clearly barred by limitation. The test to examine the tenability of application shall always be to see if a separate suit were to be filed whether that there could be a fetter of limitation. If it would be, then the application cannot be allowed and that can cause very serious prejudice to the defendant. The reason given in the application for amendment is that he had been misguided by the advice of the counsel. A wrong advice cannot be a ground for extending a period of limitation for the limitation is statute driven and not given to any extension of the period by the whims of parties.

The amendment ordered is erroneous. The revision petition is allowed, thereby dismissing the application for amendment.

(K.KANNAN)
JUDGE

29.01.2016
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