IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 4030 of 2015 (O&M)
Date of Decision: December 20, 2015

Kusum Sharma and another

...Petitioners

Versus

Darshan Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vivek Suri, Advocate
for the petitioner.

Mr. Sunil Kaushik, Advocate
for respondent nos.1 & 2.

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ANITA CHAUDHRY, J.

The petitioners are aggrieved as the Civil Judge (Jr. Division) Panchkula has allowed the application filed by the plaintiffs who were seeking amendment of the plaint. They were seeking relief of specific performance. The suit had been filed only for permanent injunction.

Darshan Singh and Rohit filed a suit in 2012 and arrayed Kusum Sharma and Deepak Sharma (now petitioners) besides some others as defendants. Defendant no.1 is a resident of Canada and owner of the house situated in Sector 12, Panchkula. Defendant no.2 is her brother. Defendant no.2 as GPA of defendant no.1 entered into an agreement to sell the property to defendants no.3 & 4. The agreement was reduced into writing on 20.09.2007. The total consideration settled was Rs.90 lacs. As per Clause 5 of the agreement, defendants no.3 & 4 could enter into an agreement to sell with some other person. They entered into another agreement with Sumit Aggarwal. Sumit Aggarwal filed a suit against defendants no.1 & 4 for specific performance of the agreement. Sumit Aggarwal also lodged an FIR against some of the defendants. In April 2010, defendants no.3 & 4 approached the plaintiffs with an offer for purchase. Defendants no.3 & 4 informed the plaintiffs about the pendency of the civil suit and assured that in case compromise was effected within a defined period, only then they would be able to transfer the house. It was pleaded that the plaintiffs and defendants no.3 & 4 entered into an agreement which was reduced into writing on 19.04.2010. The total consideration agreed upon was Rs.1,55,00,000/-. Out of this, a sum of Rs.35 lacs was received as earnest money by defendants no.3 & 4 from the plaintiffs. The sale deed was to be got executed by the original owner herself or through her attorney in favour of the plaintiffs by 19.08.2010. It was also agreed that defendants no.3 & 4 would get the earlier matter settled by way of compromise and the suit was to be withdrawn and copy of the order was to be handed over to the plaintiffs. It was also agreed that in case defendants no.3 & 4 failed to compromise then the plaintiff would be free to claim damages and seek specific performance.

The plaintiffs approached defendants no.3 & 4 time and again and they were assured that since efforts had been made but even after expiry of 19.08.2010, the compromise could not be reached and it was in June/July 2011 the plaintiffs were informed that the proposed settlement was at a advanced stage. An assurance was also given in April 2012 that the matter was almost compromised. The plaintiffs took the plea that after lapse of considerable time since defendants no.3 & 4 were giving evasive replies, the plaintiffs made an inquiry in November 2012 and came to know that the matter had been compromised in August 2012 and they were kept in dark. The plaintiffs contacted defendant no.3 who gave evasive replies. The plaintiffs filed a suit for permanent injunction restraining the defendants no.1 to 4 from alienating the property. It was pleaded that they were still ready and willing to perform their part of the agreement and were ready with the balance money. The suit was filed in December 2012.

Defendants no.1 & 2 took the plea that they had entered into an agreement with defendants no.3 & 4 and they had received a cheque of Rs.20 lacs but when the cheque was presented for encashment, it was returned with the remarks that the funds were insufficient. It was pleaded that defendants no.3 & 4 asked them to present it again and the cheque was presented again, which was again dishonoured and the agreement to sell became void *ab nitio* and defendants no. 3 & 4 did not derive any title nor could enter into any agreement and the agreement if any entered into by defendants no.3 & 4 would not bind them and these facts have not been disclosed by the plaintiffs and the suit should be dismissed with exemplary cost for dragging them in litigation.

It was pleaded that since no sale consideration was given to them, therefore, the agreement to sell with Sumit Aggarwal was surreptitious on the part of defendants no.3 & 4 and he lodged a case under Section 406, 420 IPC was and the matter was compromised and the amount in the compromise was also refunded by father of defendant no.2 as defendants no.3 & 4 claimed that they did not have sufficient funds. It was pleaded that what transpired between defendants no.3 & 4 and the plaintiffs was not to their notice.

The plaintiffs moved an application for amendment of the plaint and wanted to seek the relief for specific performance, which has been allowed by the trial Court and the concluding paragraph recorded by the Civil Judge (Jr. Division) reads as under:-

> *"After listening the submissions of both the parties and going through material on record; this court has arrived at a conclusion that the present case is in its initial stage and no prejudice will be caused to the opposite party if proposed amendments are allowed. There is no doubt allowing of the amendments will change the nature of the suit but at the same time keeping in view of the initial stage of the case, the application is allowed and accordingly disposed of."*

Defendants no.1 & 2 i.e. owner and her GPA have assailed the order primarily on the ground that the suit was for permanent injunction simpliciter and by allowing the application the nature of the suit has been changed and the limitation for filing the suit for specific performance had expired and a valuable right had accrued in their favour.

I have heard the submissions of both the sides.

The counsel for the petitioners urged that the owner through the GPA had entered into an agreement with defendants no.3 & 4 and the cheque which was given to them was dishonoured and even on second presentation it was dishonoured, therefore, the agreement became void and they were not aware of the agreement entered between defendants no.3 & 4 and the plaintiffs. It was urged that since the cheque given to them was dishonoured, therefore, defendants no.3 & 4 could not enter into any agreement or pass on any rights in favour of Sumit Aggarwal and Sumit Aggarwal had got a case registered which was subsequently compromised and they had made the payment. It was urged that the agreement which has been set up by the plaintiffs was executed on 20.09.2007 and the sale deed was to be executed on 19.08.2010 and the lower Court has allowed the plaintiffs to amend the plaint after the limitation to file the suit for specific performance had expired. It was urged that the amendment would change the character of the suit and the amendment has been sought after four years of the date of agreement and the application should be dismissed. Reliance was placed upon ***K. Raheja Constructions Ltd. Vs. Alliance Ministries 1995 AIR (SC) 1768*** *and* ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and others 2011 AIR (SC) 41***.

On the other hand, the submission on behalf of the respondents is that the amendment was necessary for determination of the real question & controversy and question of delay should not be considered at this stage and the Apex Court had allowed the amendment in the case reported as ***Sampath Kumar Vs. Ayyakannu and another 2002(4) RCR (Civil) 566*** as it would lead to multiplicity of proceedings. Reference was also made to ***Gurmeet Singh Sawhney through SPA Gagan Deep Singh Sawhney Vs. Kulbeer Singh 2015(3) PLR 379***.

Dealing with the judgment referred to by the respondents first. In ***Sampath Kumar's*** case (supra) the amendment application had been moved in the year 1999 and before the commencement of trial and the plaintiff in that suit had moved an application pleading that during the pendency of the suit defendant had forcibly dispossessed him and he wanted to claim the relief of declaration of title and consequential relief of delivery of possession. The prayer for amendment was opposed on behalf of the defendants and it was submitted that it would change the cause of action and was not permissible as he had perfected his title by adverse possession and the suit for recovery of possession was barred by time and a valuable right had accrued which could not be taken away by the proposed amendment. The Apex Court dealt with the issue in the following manner. Para 10 and 11 read as under:-

> *An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application*

and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, 2001(2) RCR(Rent) 539: (2001) 8 SCC 561.

In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in culcating the period of prescriptive title claimed to have been earned by the *defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.*

A perusal of the above would show that the amendment had been sought after 11 years of the institution of the suit and the amendment was allowed before the amendment had been made in Order 6 Rule 17 CPC. The amendment was permitted to avoid multiplicity of suits. The issue here is whether the amendment can be allowed when the limitation to claim that right had expired.

The plaintiffs were seeking amendment to seek the relief of specific performance. The last date for execution of the sale deed was 19.08.2010. The amendment had been sought in 2014 after the expiry of the period of three years. Article 54 of the Limitation Act is relevant. The period of limitation prescribed in Article 54 is three years from the date fixed for performance.

The plaintiffs could have moved the application only within three years of the last date fixed for execution of sale deed. The plaintiffs failed to move an application within time. If the amendment is allowed it would relate back to the institution of the suit which is clearly barred under Article 54 of the Limitation Act. As a result of allowing the amendment, the basis of the suit would be changed. It is held that the application for amendment filed after the expiry of limitation to include the plea of specific performance would defeat the valuable right of limitation which has accrued to the other side but the interest of defendants no.1 & 2 can be protected by directing that the amendment would be deemed to have been made on the date on which the application for amendment of plaint had been filed and not from the date of suit. The doctrine of relation back would not apply in the present case and it would be open to the defendants to take such pleas in the written statement. The revision is disposed of with a direction that the application for amendment which had been allowed shall be deemed to have been made on the date on which the application for amendment was presented.

The petition is disposed of on above terms. The order of the trial Court is modified to that extent.

(ANITA CHAUDHRY)
JUDGE

December 20, 2015

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No