

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 619 of 2013 (O&M)
Date of Decision: November 15, 2017

Pyare Lal (since deceased) through LRs. ...Petitioner(s)

Versus

Balbir Singh and another ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Ashok Tyagi, Advocate
for respondent no.1.

ANITA CHAUDHRY, J.

This revision had been directed against the order dated 05.01.2013 passed by Civil Judge (Jr. Divn.), Gurgaon, on the application filed by the plaintiff seeking amendment of plaint.

The plaintiff had filed a suit for permanent injunction alleging that the defendants had entered into an agreement to sell their property on 24.04.2007 and Rs.3 lacs had been paid as earnest money and the sale deed was to be executed on 23.05.2007. The plaintiff paid another sum of Rs.6 lacs on 08.05.2007. The plaintiff came to know that the defendants were intending to alienate and transfer the property to some other person and he approached the defendants and since there was a threat, he filed a suit seeking injunction on 17.05.2017 i.e. before the date fixed for execution of the sale deed. The defendants appeared

and denied the agreement and pleaded that the suit was not maintainable. During the pendency of the suit, the plaintiff moved an application on 02.03.2009 i.e. well within limitation seeking to amend the plaint and seek the relief of specific performance.

On going through the application, I find that there are mistakes in the application. It appears that the mistakes have occurred in the office of the lawyer and it appears that facts of some other case have been incorporated but the dates are clear in the plaint. The lower Court after hearing both the sides allowed the application.

Defendant no.1 is aggrieved with the order.

I have heard the submissions of both the sides.

The counsel for the petitioner has referred to ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and others (2010) 14 SCC 596*** to support his submission. He urges that the amendment could not be allowed as it would change the character of the suit and there was a delay in filing the application and the cause of action was available to him even in the beginning and the application has been moved after the trial has started. It was urged that the plaintiff did not take the plea that he could not have raised it before the commencement of trial and the suit was also hit by the provisions of Order 2 Rule 2 of CPC.

On the other hand, the submission is that the plaintiff could not have filed the suit for specific performance as the date agreed upon was yet to come and since there was a threat, a suit for injunction

was filed. It was urged that the other brother of the petitioner/defendant has already executed the sale deed regarding his share on 18.05.2007 i.e. much before the date fixed and it was defendant no.1 who was not keen on executing the sale deed and had threatened to sell the property to someone else, therefore, the suit for injunction had to be filed before the due date.

The plaintiff had filed the suit before the last date fixed for specific performance. The plaintiff could file the suit for specific performance within three years. The application for amendment has been filed within limitation. No plea under Order 2 Rule 2 of CPC had been taken in the application and a new submission is sought to be made now. Once the plaint is amended, the defendants would get a right to file the written statement and raise all the pleas which are available to them.

The crucial question is whether the plaintiff had the cause of action to file a suit for specific performance on 17.05.2007. The answer is in the negative. The cause of action to seek this relief arose only after the filing of the suit. The lower Court had rightly permitted the plaintiff to amend the plaint. The period of limitation prescribed under Article 54 of the Limitation Act is three years from the date fixed for performance. I find no merit in the petition and is dismissed.

November 15, 2017

(ANITA CHAUDHRY)
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No