

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

C.R. No. 8388-2015

Date of decision : 14-11-2017

Sunita Rani

...Petitioner

versus

Rajesh Chaudhary and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Puneet Gupta, Advocate
for the petitioner.

Mr. B.S. Bedi, Advocate
for respondent No. 1

RITU BAHRI, J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 08.10.2015 (Annexure P-10) passed by the learned Addl. Civil Judge (Sr. Divn.) Chandigarh and for dismissing the application of respondent No. 1 under Order 6 Rule 17 CPC filed in Civil Suit No. RBT/2761 dated 08.05.2010.

Brief facts of the case are that one booth No. 711, Motor Market and Commercial Complex, Manimajra was allotted to Smt. Phoola Rani vide allotment letter dated 16.08.1979. The deed of the conveyance was executed thereof on 18.11.1981, who further executed an agreement to sell dated 26.01.2009 with respondent No. 1. The No Objection Certificate for the sale was issued by Municipal Corporation, Chandigarh on 21.08.2009. However, respondent No. 1 did not execute the sale deed the last date i.e. of which should be extended upto 07.09.2009 (05.09.2009/06.09.2009 being Saturday/Sunday). Smt. Phoola Rani had

already given a legal notice dated 26.08.2009 (Annexure P-1) calling upon respondent No. 1 to execute the sale deed before the last dated 05.09.2009 failing which the earnest money shall stand forfeited and she would sell the booth to some other person. Respondent no. 1 gave his reply dated 15.09.2009 (Annexure P-2) to the second legal notice dated 08.09.2009 claiming that he has purchased the stamp papers on 07.09.2009 (05.09.2009/06.09.2009 being Saturday/Sunday). Smt. Phoola Rani executed the sale deed on 06.11.2009 in favour of the present petitioner (Annexure P-3). Respondent No. 1 then filed a civil suit in November, 2009 for specific performance regarding the agreement to sell dated 26.01.2009 claiming it to be free from all encumbrances and also sought permanent injunction (Annexure P-4). Thereafter, an affidavit dated 16.12.2009 (Annexure P-5) was filed by respondent No. 1. The petitioner then filed an application under Order 1 Rule 10 CPC for being impleaded as party-defendant in the said civil suit and the same was allowed on 07.08.2014. Defendant No. 2 filed her written statement dated 28.08.2014 (Annexure P-6), which reveals that the factum of the purchase of the suit property and the sale deed be executed on 06.12.2009. On 26.02.2015 (Annexure P-7), replication was filed and following issues were also framed:-

- “1. Whether the plaintiff was always ready and willing to perform his part of the agreement dated 26.01.2009 while defendant No. 1 failed? OPP*
- 2. Whether defendant No. 2 is bonafide purchaser without notice and for due consideration? OPP.*

3. *Whether the plaintiff is entitled to relief of specific performance of contract? OPP*
4. *Whether the defendants are illegally interfering in the possession of the plaintiff? OPP*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Relief.*

On 17.09.2015 (Annexure P-8), an application under Order 6 Rule 17 CPC was filed for amendment of the prayer clause and the head note of the suit to which reply was filed on 30.09.2015 (Annexure P-9) and the same was allowed on 08.10.2015 (Annexure P-10).

Learned counsel for the petitioner argues that the relief sought of challenging the sale deed was highly belated time barred and is not permissible in law. The sale deed was executed on 06.11.2009 and it was in the knowledge of the respondent No. 1 on 16.12.2009 as stated in his affidavit (Annexure P-5). The certified copy of the sale deed was also exhibited as PW8 by the plaintiff. The application for amendment was moved on 17.09.2015 i.e after a period of almost 06 years.

Learned counsel further argues that the issues stood framed on 26.02.2015. P.W's stand examined and cross examined on various dates. The application filed under Order 6 Rule 17 CPC was not maintainable in view of the bar contained in Order 6 Rule 17 CPC as the trial stood commenced with the framing of the issues, the evidence being led etc.

Learned counsel for the petitioner also submits that in the reply filed by the petitioner (Annexure P-9), the petitioner took the detailed

objections that the application is not at all maintainable as the proposed amendment shall certainly change the nature of the suit. Further plaintiff has sought amendment only in the prayer clause and there is no pleading qua the legal and valid sale deed dated 06.11.2009 executed in favour of the petitioner.

The short question for consideration before this Court is that whether after allowing of the amendment, the defendants can raise the plea of limitation.

This question has been answered by Hon'ble the Supreme Court in a case of ***L.C. Hanumanthappa (since dead) represented by his LR's vs. H.B. Shivakumar, 2015(4) RCR (Civil) 194*** wherein plaintiff filed a suit for permanent injunction seeking direction that defendant be restrained from disturbing his possession over suit property. Respondent denying title of plaintiff in written statement. Plaintiff filed application for amendment of plaint to add relief of title after more than 20 years of filing written statement. The application was dismissed and it was held that under Article 58 of Limitation Act, 03 years period is prescribed to amendment from cause of action. In the instant case, cause of action arose on 16.05.1990 when written statement was file. The doctrine of relations back not applicable in the facts of the case. In para 27 and 29, it has been observed as under:-

27. In Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and Ors., (2010) 14 SCC 596, this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The

suit had been filed on 11th February, 1991. An amendment application was moved under Order VI Rule 17 of the Code of Civil Procedure on 16th December, 2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held:-

In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of

amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in Vishwambhar v. Laxminarayan [(2001) 6 SCC 163] , if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case.” [at paras 24, 25 and 32]

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels Private Limited (supra)*, the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the

plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

Applying the ratio of **ShivaKumar's case (supra)**, the amendment sought in the relief clause is merely formal in nature and consequence of defendant No. 2/petitioner becoming party and filing pleadings. is to be added as party in the suit (Annexure P-4).

Accordingly, order dated 08.10.2015 (Annexure P-10) passed by the learned Addl. Civil Judge (Sr. Divn.) Chandigarh is upheld. However, it shall be subject to the plea of limitation which can be taken by the petitioner before the learned trial Court.

Dismissed.

14-11-2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No