

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

RSA No. 612 of 2017(O&M)

Date of decision : 18.09.2017

Bhagat Ram and another

...Appellants

versus

Gurmeet Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Suvir Sidhu, Advocate
for the appellants.

RAJIV NARAIN RAINA, J. (ORAL)

The plaintiff appellants' vainly attempt in second appeal to raise the application under Order 6 Rule 17 CPC filed on 31.05.2013 like a phoenix from the ashes after losing two bouts of litigation in the lower Courts by putting forth an argument that the learned trial Court failed to pass a specific order Order 6 Rule 17 CPC and left it hanging and the fault can be cured only by remand. In that application, the plaintiff-appellant prayed that he may be allowed to amend his plaint dated 19.03.2009. Four years had passed by the time the application was filed. And to make matter worse for the appellants they had appeared as their own witness and stepped in to depose in the trial Court on 07.08.2013. The testimony was recorded 2 ½ months after the application was filed and this amounted to waiver of right to claim an order on the application.

In opposition to the claim in the eviction petition, the defendants-appellants had put in their written statement of defence on 16.05.2009 and the issues were struck by the trial Court on 10.08.2011 of which the central defence was that the suit was barred by limitation. In the suit was challenged the sale deed of the year 1977. In the original suit, the plaintiffs did not plead when they had knowledge of the sale deed and this

was a serious lacuna which is sought to be fill and introduce in the plaint by an application under Order 6 Rule 17 CPC. The trial Court dismissed the suit as barred by limitation since the maintainability of suit could only be established by legal evidence or accurate pleading of the date of knowledge of sale deed to save him from limitation.

Not satisfied with the dismissal of the suit, the plaintiffs carried an appeal to the learned Additional District Judge, Sangrur, which failed on 04.08.2016 against which this appeal has been filed.

Learned first appellate Court has affirmed the findings of the trial court holding the suit barred by limitation, but, before the appellate court the issue was not raised nor a complaint made that the trial Court had not passed specific orders on the application under Order 6 Rule 17 CPC at the time of or before deciding the main case and, therefore, the issue cannot be raised for the first time in second appeal. The application would be deemed to be not pressed. Besides, howsoever liberal view one may take in an application for amending the pleadings, one cannot lose sight of the fact at what stage it had been filed and the subsequent conduct of a party in neither pressing the application in two courts thereby deemed to giving up the interlocutory claim for amendment of the plaint.

As a matter of fact, the trial Court should have returned the suit itself at the threshold when it did not find pleaded the date of knowledge of execution of the sale deed, since that was a duty cast on the trial Court which should have rejected the plaint on the first date. Court could have looked only to the averments in the plaint and not any subsequent pleadings.

Learned counsel for the appellants argues that the defeat of the plaintiff in two Courts can be attributed to the counsel who failed to plead

material fact, and, therefore this Court should take a lenient view by remitting the case to the stage of the application by setting aside both the decrees and judgments of the Courts below. I am afraid this is too farfetched an argument to accept for the asking. If the plaintiff complains against the lack of skill of his counsel for ruining his case, he could always have made a complaint to the Bar Council or to have filed suit for damages for lack of due professional care and skill. But the settled rights of the defendants under the decree cannot be unsettled lightly in the fashion urged by the plaintiff-appellants for remanding the case to a stage prior to framing of issues and allow holding a *de novo* trial. Accepting such a plea would be an absurdity. The application was patently frivolous and vexatious. The Courts rightly ignored it and were not under any legal obligation to pass orders thereon.

I would, therefore, find no reason whatsoever to entertain this appeal devoid of merit and which is accordingly dismissed *in limine*.

(RAJIV NARAIN RAINA)
JUDGE

September 18, 2017

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Whether speaking/reasoned : *Yes*

Whether reportable : *Yes*