

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

CR No.3535 of 2013 (O&M)
Date of decision : 26.04.2018

Mohit Khanna and another

...Petitioners

Versus

Ashima Singh Malik and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Parveen Chauhan, Advocate for the petitioners.

Mr. Aman Bansal, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

CM No.7125-CII of 2018

Application is allowed.

Annexures P-8 to P-10, are taken on record, subject to all just exceptions.

Main Case

The plaintiffs-petitioners have challenged two orders, one rejecting the plaint under Order 7 Rule 11 CPC and second, dismissing the application filed under Order 6 Rule 17 CPC seeking amendment of the plaint so as to include the relief of specific performance of the agreement to sell.

It is the case of the plaintiffs that there was an agreement to sell executed by Lokender Singh-defendant No.2 on 16.06.2010. It is further the case of the plaintiffs that as per the agreement to sell, the sale deed was to be executed and registered on 24.08.2010. The plaintiffs filed a suit seeking relief of permanent injunction restraining the respondents to alienate the property in dispute. The suit was filed on 18.10.2010. Notice of the suit was issued.

The defendants contested the suit and filed an application under Order 7 Rule 11 CPC praying for rejection of the plaint on the ground that the suit is barred under Section 41 of the Specific Relief Act. The plaintiffs immediately filed an application for seeking amendment of the plaint so as to add the relief of specific performance of the agreement to sell dated 16.06.2010.

Learned trial Court dismissed the application under Order 6 Rule 17 CPC whereas allowed the application under Order 7 Rule 11 CPC. Both the orders have been passed on the same day i.e. on 13.10.2012. While dismissing the application under Order 6 Rule 17 CPC, learned Court has held that the amendment sought in the plaint is barred under Order 2 Rule 2 CPC. The Court has held that since on the day, the suit for injunction was filed, cause of action to file a suit for specific performance was available but the plaintiffs omitted to do so, therefore, now amendment sought is barred under Order 2 Rule 2 CPC.

In the considered opinion of this Court, amendment, if allowed, would relate back to the date of institution of the suit. Still

further, application filed under Order 6 Rule 17 CPC seeking amendment of the plaint was filed when the suit was at its initial stage. The application for amendment of the plaint was filed even before the written statement had been filed in the case. The trial of the case had not started. The Court could at the most frame an issue on Order 2 Rule 2 CPC and examine the issue after the parties had led their evidence. No doubt, plea of Order 2 Rule 2 CPC would always depend upon the facts and circumstances available on the file, however, in the considered opinion of this Court, application under Order 6 Rule 17 CPC filed at the initial stage of the suit could not be dismissed on this count.

Second application filed by the defendants under Order 7 Rule 11 CPC has been dismissed only because the application for amendment has been declined. The second order passed is also equally erroneous. The second order is dependent upon the first order passed by the Court.

In view of the aforesaid, the orders under challenge dated 13.10.2012 are set aside.

The application for amendment of the plaint is allowed. The suit is restored to its original number. It would be open to the defendants to contest the suit on all possible defences including Order 2 Rule 2 CPC. The order passed by this Court should not be taken as a final expression of opinion on applicability of Order 2 Rule 2 CPC.

Parties through their counsel are directed to appear before the trial Court on 14.05.2018.

Taking into consideration that the suit was instituted in the

year 2010, the learned trial Court is requested to take steps to expeditiously dispose of the suit.

In view of what has been observed above, the present revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No