

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

Civil Revision No.5561 of 2013 (O&M)

Date of decision: May 29, 2018

Raj Kumar

...Petitioner

Versus

Gian Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

None for respondents No.1, 3 and 4.

Mr.Amit Jain, Advocate
for respondent No.2.

Mr.Navneet Singh, Advocate
for respondents No.5 to 7.

INDERJIT SINGH, J.

Petitioner Raj Kumar has filed this revision petition against Gian Chand and other respondents under Article 227 of the Constitution of India for setting aside the order dated 26.08.2013 passed by learned Addl. Civil Judge (Senior Division), Narwana, vide which the application filed by plaintiff-petitioner for amendment of plaint was dismissed.

Notice of motion was issued. Learned counsel for respondent No.2 and respondents No.5 to 7 appeared and contested the petition.

I have heard learned counsel for the parties and have gone

through the record.

From the record, I find that Raj Kumar plaintiff-petitioner filed a suit against Gian Chand and other defendants for declaration to the effect that sale deed No.192 dated 21.05.2009 and power of attorney No.96 dated 19.04.2006 with respect of land measuring 4 kanals 15 marlas, is not binding upon the rights of the plaintiff and is liable to be set aside and for delivery of possession to the plaintiff along with rent and use and occupation charges as well as for permanent injunction restraining the defendants from changing the nature of suit property etc.

During the pendency of the suit, the plaintiff filed an application for amendment under Order 6 Rule 17 CPC seeking relief of specific performance along with possession. It is mainly stated in the application that plaintiff is owner in possession of the suit property and had let out the property to defendant No.1. It is further stated that defendants No.4 to 8 had sold the suit property to him for consideration of ₹9 lakhs on 10.06.2004 and hence, he seeks specific performance on the basis of agreement to sell dated 10.06.2004. It is argued before the lower Court that due diligence of the plaintiff has been proved and as the plaintiff could not file the suit for specific performance earlier, hence this application be allowed.

On the other hand, defendants contested the application and stated that defendants No.1 to 3 had purchased the suit property vide sale deed dated 21.04.2009 for a sale consideration of ₹13.07 lakhs from defendants No.4 to 8 through their power of attorney defendant No.9 and hence, defendants No.2 and 3 had become owners in possession of the suit property on 21.04.2009. It is also the case of the defendants that plaintiff

amended and seeks to change his declaration suit into a suit for specific performance, which is beyond limitation.

Learned Addl. Civil Judge (Sr. Divn.) Narwana, vide order dated 26.08.2013 dismissed the application by stating that the amendment sought would change the entire nature of the suit and the amendment sought by the plaintiff was in his knowledge when he filed the suit but he had filed this application at belated stage. As per the law, when the trial has already started, the amendment cannot be allowed.

From the perusal of the record, I find that the impugned order is correct and as per law. No illegality has been committed by learned Court below while dismissing the application. By asking amendment for changing the suit from declaration to specific performance, it will change whole nature of the suit. Furthermore, on the basis of that agreement, the plaintiff has filed the suit by stating that he has become owner in possession of the suit property and asked for declaration. Now, the plaintiff wants to get enforced the agreement dated 10.06.2004.

The perusal of the record nowhere shows that plaintiff is also asking for amendment that he remained ready and willing to perform his part of the contract and is still ready and willing to perform his part of contract. There is also no averment that as to when he first asked the defendants to get executed the sale deed and when the defendants refused to execute the sale deed to know cause of action for the purpose of limitation. The agreement is of the year 2004 and suit has been filed in the year 2010. If the plaintiff files the suit for specific performance now, it will be time barred. Furthermore, the trial has already started and all these facts were already in the knowledge of the plaintiff at the time of filing the suit.

Keeping in view above discussion, I find that no illegality has been committed by learned Court below while passing the impugned order. The impugned order dated 26.08.2013 passed by learned Addl. Civil Judge (Sr. Divn.), Narwana, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

As the main case is decided, therefore, civil misc. application, if any, also stands disposed of.

May 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No