

In the High Court of Punjab and Haryana at Chandigarh

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Civil Revision No.6530 of 2016

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Date of decision:28.5.2018

Hem Lata

.....Petitioner

v.

Pushpinder Sharma and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Akshay Jindal, Advocate for the petitioner.

Mr. Hardeep Singh, Advocate for respondent No.1.

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Inderjit Singh, J.

This civil revision petition has been filed under Article 226/227 of the Constitution of India for setting aside the impugned order dated 1.9.2016 (Annexure-P.6) passed by the Additional District Judge, Ambala, whereby the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of plaint during the pendency of the appeal, has been dismissed by the learned Additional District Judge, Ambala. It has been further prayed that during the pendency of the present revision petition further proceedings before the learned first Appellate Court be stayed.

Notice of motion was issued in this case.

Mr. Hardeep Singh, learned Advocate has put in appearance on behalf of respondent No.1 and contested this civil revision petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Hem Lata-plaintiff filed suit against Pushpinder Sharma, Narinder Dev, Haryana Urban Development Authority and Estate Officer, HUDA for a decree for declaration that the plaintiff is the owner and in possession of residential plot No.EWS-487, Sector 4, Naraingarh and a decree for mandatory injunction directing the defendant No.1 to transfer the residential plot in favour of the plaintiff after getting necessary permission from defendants No.3 and 4 and further directing defendants No.3 and 4 to transfer the residential plot in favour of the plaintiff on receipt of the requisite transfer fees etc. It has also been prayed for a decree for permanent injunction restraining the respondent No.1 to alienate the aforesaid plot either to defendant No.2 or to anybody else except the plaintiff.

The suit of the plaintiff was dismissed by the learned Civil judge (Junior Division), Naraingarh, vide judgment and decree dated 18.7.2013. An appeal was filed by the plaintiff before the learned District Judge, Ambala. During the pendency of the appeal before the learned Additional District Judge, an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint was filed which was dismissed by the learned Additional District Judge, Ambala vide impugned order dated 1.9.2016. Aggrieved from this order, the present revision petition has been filed.

From the record, I find that earlier the plaintiff filed the suit for declaration as well as mandatory injunction and for permanent injunction. The said suit was stated to be filed in the year 2005 and the amendment application has been filed during the pendency of the appeal on 10.8.2015

to amend the plaint and to change the suit for specific performance or for recovery of Rs.45,000/-. The agreement to sell is stated to be dated 1.9.1994. As per learned counsel for the petitioner, no date for execution of the sale deed had been mentioned in the agreement. Even if it is taken as it is when the respondent refused to execute the sale deed and the cause of action arose to the plaintiff, then he filed the suit in the year 2005. The period for limitation for suit of specific performance and for recovery of the suit is three years from the date when cause of action arose. After more than 10 years, the amendment cannot be allowed being time barred. Further more, this amendment amounts to change the nature of the suit. There is no pleading earlier regarding readiness and willingness to perform the part of the agreement etc. which now the plaintiff wants to add. Further more, during the pendency of the suit before the Civil Judge (Junior Division), no due diligence had been shown. If fresh suit is filed at the time of filing an application under Order 6 Rule 17 CPC, then it would have been time barred.

Learned counsel for respondent No.1 relied upon the law laid down by the Hon'ble Supreme Court in Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) v. Ramesh Chander and others, 2011 AIR (SC) 41, in which the Hon'ble Supreme Court has held that civil suit claiming the title over the land and injunction, the plaint sought to be amended after 11 years to add relief of specific performance of agreement of sale of land, the application was dismissed. It has also been held by the Hon'ble Supreme Court that limitation to file suit for specific performance was three years which expired long ago and the amendment will change the

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character of the suit and will raise the question of pecuniary jurisdiction of the trial Judge.

Keeping in view the law laid down by the Hon'ble Supreme Court, I find that the impugned order passed by the learned Additional District Judge, Ambala, is correct as per law and no illegality has been committed and it does not require any interference from this Court and the same is upheld.

Finding no merit in this civil revision petition, the same is accordingly dismissed.

May 28, 2018.

(Inderjit Singh)
Judge

hsp

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