

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7348 of 2013 (O&M)
Date of Order:23.02.2018

Ajaib Singh

..Petitioner

Versus

Gurmit Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Ms. Geeta Sharma, Advocate,
for respondent no.3.

ANIL KSHETARPAL, J (Oral)

Plaintiff-petitioner is aggrieved of the order passed by the learned trial court dated 26.11.2013, dismissing application under Order 6 Rule 17 of the Code of Civil Procedure, seeking permission to amend the plaint.

Learned trial court has dismissed the application primarily on the ground that the suit is at the advance stage and the plaintiff is changing the nature of the suit.

Plaintiff had filed a suit for declaration to the effect that the plaintiff is owner in possession of House No.1447/10, Phase-XI, Mohali, as a purchaser on the basis of the agreement to sell, general power of Attorney, and a registered Will executed by defendant no.2. Originally defendant no.1 was owner of the property. Defendant no.1 on the basis of certain documents including agreement to sell, General Power of Attorney and a registered Will transferred his rights as were prevalent (although not legally

permissible) at that time in favour of Defendant no.2. Plaintiff purchased those rights further on execution of similar documents by defendant no.2.

Plaintiff apart from declaration also prayed for mandatory injunction directing the defendants to execute the sale deed/conveyance deed/transfer deed. Plaintiff also prayed for permanent injunction.

Defendant no.2 at one stage filed the written statement dated 24.04.2013, contesting the suit. However, thereafter neither defendant no.1 nor defendant no.2 chose to contest the suit filed by the plaintiff. Plaintiff filed an application seeking amendment of the plaint to correct certain typographical errors and to add the relief of specific performance of the agreement to sell dated 06.09.1997. The aforesaid application was dismissed by the learned trial court as noticed above.

A reading of the plaint establishes that the plaintiff originally also had filed a suit for mandatory injunction directing the defendants to execute the sale deed/conveyance deed/transfer deed. Prayer for direction to the defendants was made but unfortunately the suit was not styled as suit for specific performance.

Defendant no.2 filed written statement on 24.04.2013. Plaintiff filed an application for amendment of the plaint on 25.11.2013, once he came to know that defendant no.2 has chosen to deny the documents executed by him in his favour and having pleaded that General Power of Attorney in favour of the plaintiff had been cancelled.

No doubt, the application for amendment was filed at quite later stage. However, as noticed earlier the plaintiff in fact had prayed for mandatory injunction directing the defendants to execute the sale deed. So in other words, plaintiff is only wanting that the suit should be in a proper

form. The remaining amendments are only correction of typographical errors. Plaintiff also wants to add the pleadings in consonance with Section 16 of the Specific Relief Act.

On the other hand, learned counsel for respondent no.3 has submitted that the nature of the suit is being changed and the amendment sought by the plaintiff is barred by limitation.

As noticed earlier, fundamental nature of the suit is not being changed. The suit was filed by the plaintiff on the basis of agreement to sell, General Power of Attorney and registered Will. Hence, the submission has no substance.

With regard to the objection that the prayer for amendment filed by the plaintiff so as to add the relief of specific performance of the agreement to sell has become time barred, it will be for the trial court to frame an issue and adjudicate upon the same finally on the basis of evidence produced by the parties.

In view of the discussion made hereinabove, the order under challenge is set aside. The plaintiff is permitted to amend the plaint.

However, since the suit was instituted in the year 2008, learned trial court is requested to finally decide the suit within a period of 6 months from the date of receipt of a certified copy of this order.

February 23, 2018
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(ANIL KSHETARPAL)
JUDGE

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