

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3467 of 2018(O&M)
Date of Decision: 20.03.2019

Sahib Singh

.....Petitioner

Versus

Brij Lal

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Atul Jain, Advocate
for the petitioner.

Mr. J.S. Saini, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 15.01.2018 passed by Civil Judge (Junior Division), Patiala, whereby the application filed by the petitioner for amendment of the plaint under Order 6 Rule 17 CPC was dismissed.

[2]. Perusal of the record would show that initially a civil suit for permanent injunction was filed by the plaintiff/petitioner against the defendant/respondent on the basis of agreement to sell dated 10.04.2014 in which target date for execution of sale deed was fixed as 31.12.2014. Civil suit was filed on

31.07.2014 on the premise that during currency of the period of agreement to sell, defendant intended to part with the property in favour of somebody else. In that suit, an application under Order 6 Rule 17 CPC was filed on 22.04.2016 seeking to convert the suit for permanent injunction into a specific performance. The said application has been dismissed by the trial Court on the premise that plaintiff can file his individual suit on the basis of cause of action arising out of agreement to sell.

[3]. Learned counsel for the respondent stated that respondent had already filed a suit for declaration, challenging the Will dated 18.03.1999 in favour of the petitioner. During the currency of the said suit, the alleged agreement to sell dated 10.04.2014 came to be executed by forged signatures of the respondent. Learned counsel further stated that the aforesaid agreement has been forged in order to compel the respondent to withdraw the suit. He has admitted that the said suit filed by the respondent seeking declaration qua the Will dated 18.03.1999 has been dismissed by the trial Court, however, the first appeal is pending before the Lower Appellate Court.

[4]. Having heard learned counsel for the parties, I am of the view that cause of action arising out of agreement to sell dated 10.04.2014 was not barred by limitation as on the date of filing of application i.e. 22.04.2016 under Order 6 Rule 17 CPC.

Purpose of the provision is to prevent multiplicity of litigation. The suit for permanent injunction was filed to prevent the defendant from parting with the property in question during currency of agreement to sell. The Court is not supposed to decide merits of the case at this stage. The suit would be decided on merits on the basis of evidence likely to be led by the parties during trial.

[5]. Since the cause of action for filing the suit for specific performance on 22.04.2016 was not barred by limitation, therefore, trial Court shall decide the *lis* on merits, leaving the parties to lead their respective evidence.

[6]. In view of above, impugned order dated 15.01.2018 passed by Civil Judge (Junior Division), Patiala is set aside. This revision petition is allowed, however subject to payment of costs of Rs.15,000/- to be paid to the defendant. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

20.03.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**