

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

Sr. No.204

C.R. No.6101 of 2017 (O&M)

Date of decision: 16.01.2019

M/s Omaxe Housing and Developers Limited

....Petitioner

versus

Naveen Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Aashish Chopra, Advocate and
Ms. Sumiti Arora, Advocate
for the petitioner.

Mr. Virendra Rana, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

Through the instant petition challenge is made to order dated 30.05.2017 passed by the Civil Judge (Junior Division), Gurugram (for short – the Trial Court) dismissing the application filed by the petitioner under Order 6 Rule 17 read with Section 151 CPC for amendment of its plaint.

The undisputed facts which have emerged after hearing learned counsel for the parties as also on perusal of the record of the case are that Baljit Singh, Krishna and Santra jointly owned half share in agricultural land measuring 1 Bigha 3 Biswas comprised in Khewat No.2, Khata No.2, Khasra No.295 situated in village Islampur, Tehsil and District Gurugram

(for short- the plot). The other half share in the plot was owned by Hari Singh. On 07.08.2004, all the aforesaid owners of the plot entered into a collaboration agreement with the petitioner for developing the plot. In pursuance to such agreement, the petitioner paid to its vendors an amount of ₹61,27,344/- as security. On 07.08.2004 itself, the parties also entered into an agreement through which the aforesaid owners of the plot agreed to sell the plot to the petitioner for a consideration amount equivalent to the security paid by the petitioner to them under the afore-referred collaboration agreement. On 22.08.2004, a Will was also executed by the plot owners bequeathing the plot in favour of the petitioner and on 07.11.2004, in pursuance to the aforesaid transactions, possession of the plot was handed over to the petitioner. On 18.10.2005 the plot owners executed a power of attorney authorizing the petitioner Company or its nominees to negotiate; enter into agreements to sell; collaborate or dispose off or transfer by way of exchange/mortgage; lease or even sell the plot. On 28.12.2011, Krishna, Santra and Hari Singh executed a sale deed in favour of the petitioner with regard to their share in the plot. However, no such sale deed was executed by the respondents, who are the legal heirs of Baljit Singh, qua their share.

On 01.04.2014, the petitioner filed a suit seeking therein to be declared owner in possession of 1/6th share of land measuring 3 Biswa 17 Biswansi comprised in Khewat No.2, Khata No.2, Khasra No.295 in village Islampur, Tehsil and District Gurgaon (for short – the suit property). A decree for permanent injunction to restrain the respondents, who were the defendants in the suit, from interfering in the possession of the petitioner over the suit property and from alienating the same was also sought. A further prayer was made for the issuance of a decree of mandatory

injunction directing the respondents to execute a formal sale deed in favour of the petitioner qua the suit property. On being put to notice, the respondents appeared before the Trial Court and filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint as according to them, the same did not reveal any cause of action and that the petitioner's suit was under valued. They further submitted that through a declaratory suit, the petitioner was in fact seeking to enforce the sale agreement dated 07.08.2004. The petitioner then filed an application under Order 6 Rule 17 read with Section 151 CPC seeking amendment of its plaint primarily to substitute therein the prayer made for the issuance of mandatory injunction to direct the respondents to execute a formal sale deed in favour of the petitioner qua the suit property with the prayer for issuance of a decree of specific performance of the agreement between the parties with regard to the suit property. After dismissing the application filed by the respondents under Order 7 Rule 11 CPC, the Trial Court considered and rejected the petitioner's amendment application primarily on the ground that the sought amendment would change the nature of the petitioner's suit and that such amendment was time barred. Dismissal of the petitioner's amendment application is the subject matter of challenge in the present proceedings.

The amendment sought for by the petitioner is to substitute the prayer for the issuance of a decree of mandatory injunction to direct the respondents to execute a formal sale deed in its favour qua the suit property with the prayer for the issuance of a decree of specific performance of the contract between the parties qua the suit property. Through both the prayers, the petitioner seeks the respondents to execute a sale deed in its favour in pursuance to the agreement between them. That being so, through the

amendment sought by the petitioner there would be no change in the nature of the suit originally filed by it.

Through the amendment application dated 22.09.2014, the petitioner seeks enforcement of an agreement entered into between the parties on 07.08.2004. At first blush, the sought amendment seems to be time barred but deeper scrutiny clears such impression as on perusal of the agreement to sell in question it is revealed that time is not the essence therein with regard to the execution of the sale deed as the agreement does not refer to any date agreed to by the parties for execution of the sale deed.

In para no.16 of its plaint, the petitioner has specifically averred that the cause of action to file its suit arose to the petitioner/plaintiff firstly on 16.06.2011, when the application for obtaining of license was rejected; secondly on 28.12.2011, when the co-owners executed a sale deed in favour of the petitioner and on 10.03.2014 when the respondents refused to execute the sale deed qua their shares in the suit property in favour of the petitioner and threatened to forcibly dispossess the petitioner from the suit property as also to alienate the same to some other person.

The issue of limitation is of both law and fact and whether the petitioner's suit is time barred will be adjudicated upon after both parties complete their pleadings and lead their evidence. Thus, the Trial Court erred in rejecting the petitioner's amendment application on the ground of limitation.

In view of the above, as also for the reason that the petitioner seeks to amend its original plaint at an early stage of the trial when the respondents are yet to even file their written statement(s) and because one of the factors which made the petitioner to seek amendment was the objection

taken by the respondents themselves in their application filed by them under Order 11 Rule 7, CPC, after setting aside the impugned order, the application filed by the petitioner for amendment of the plaint (Annexure P-5) is allowed.

The petition is allowed in the above terms.

It may be clarified that the observations made herein above are before the parties have led their evidence and therefore, at the time of final decision of the suit which would likely be after both the parties have led their evidence, the Trial Court would not be influenced by the same.

(DEEPAK SIBAL)
JUDGE

January 16, 2019
Jyoti 1

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