

245

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

**Civil Revision No.6251 of 2018 (O&M)
Date of Decision: 22.11.2019**

**Saroj (through her GPA Sunil Kumar @ Sunil Antil)
.....Petitioner**

Vs

**Joginder Singh and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Navmohit Singh, Advocate
for the petitioner.

Mr. R.C. Sharma, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 12.07.2018 passed by the Addl. Civil Judge (Sr. Divn.) Sonipat, vide which 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 the plaintiff filed a suit for mandatory injunction. In pith and substance the suit for mandatory injunction has been filed by incorporating the cause of action arising out of suit for specific performance. Paras No.3, 4, 8, 9 and 14 are reproduced hereasunder:-

- “3. *That the defendant No.1 has approached to the plaintiff to sell his above said land to the plaintiff in a total sale consideration of Rs.22 lacs and the plaintiff accepted the offer of the defendant No.1 to purchase the above said land and the plaintiff paid full and final payment of the sale consideration amounting to Rs.22 lacs on 26.09.2011 and on the same day, the defendant No.1 has executed as full payment agreement to sell as well as receipt of the same in the presence of the witnesses in Tehsil Camp at Sonapat after putting up the signature by the defendant No.1 on the same. The photocopy of the agreement to sell and receipt are enclosed herewith.*
4. *That as per the terms & conditions of the agreement, the date for execution and registration of the sale deed was fixed for 31.12.2011 and it was also agreed that the defendant No.1 will pay the entire loan amount in respect of above said land if any prior to 31.12.2011.*
8. *That on 18.09.2012 the plaintiff served a legal notice upon the defendant No.1 through his counsel by Regd. A.D. calling the defendant No.1 to get execute and register the sale deed in respect of the plot in dispute as detailed in 2 of the plaint in the name of the plaintiff as per the terms & conditions of the agreement to sell on or before 03.10.2012 before the Sub-Registrar Sonapat, but the defendant No.1 did not give the reply of the same. The photocopy of the legal notice and postal receipt are enclosed herewith.*
9. *That the plaintiff has requested the defendant No.1 many times to execute and register the sale deed in favour of the plaintiff as the plaintiff has already made the payment of entire sale consideration and also ready and willing to bear charges of stamp and registration etc. but the defendant No.1 has refused to*

accede to the request of the plaintiff finally on 04.02.2014. Hence this suit.

14. *That there is no other civil litigation is pending between the parties to the suit in any court of law in respect of the matter in dispute.*

It is therefore, prayed that a decree for mandatory injunction directing the defendant No.1 to execute and register the sale deed in respect of the suit property as detailed in para No.2 of the plaint as per the full payment agreement to sell dated 28.08.2006 and the defendant No.2 has no right title or interest to purchase the same, may kindly be passed in favour of the plaintiff and against the defendants.

Any other relief which the Hon'ble court may deem fit and proper also be awarded to plaintiff."

- [3]. Perusal of the aforesaid pleadings would show that the plaintiff in essence prayed for a direction to defendant No.1 to execute and register the sale deed in respect of suit property as she had already paid full payment under the agreement to sell dated 28.08.2006 and defendant No.2 has no right to purchase the same except the title of the suit and the relief in the form of direction, the pleadings are for the enforcement of agreement to sell dated 26.09.2011 vide which the full payment was made in favour of the defendant No.1 in the presence of witnesses and target date was fixed as 31.12.2011. It was also agreed that defendant No.1 will pay the entire loan amount in respect of the said land (if any) prior to 31.12.2011. The date for execution and registration of sale deed was further extended upto 20.08.2012

with mutual consent of the parties. It was so recorded at the back of agreement to sell dated 26.09.2011.

[4]. Plaintiff has also pleaded readiness and willingness on her behalf to honour the commitment by way of visiting the office of Sub-Registrar along with necessary expenses towards stamp duty and registration charges along with her husband and she remained present from 9.00 a.m. to 5.00 p.m., but defendant No.1 did not turn up. Plaintiff got her presence marked before the Sub-Registrar by way of getting attested an affidavit from the Executive Magistrate, Sonipat on 20.08.2012.

[5]. Perusal of the pleadings of the plaint is suggestive of the fact that the plaintiff has prayed for enforcement of agreement to sell in the form of specific performance, but since there was some loan which was to be paid by defendant No.1 for which pleadings were made that the same would be paid by defendant No.1 prior to 31.12.2011. Even the plaintiff served a legal notice on 18.09.2012 as per contents of para No.8, by calling upon defendant No.1 to get the sale deed executed on or before 31.10.2012 before the Sub-Registrar. On refusal by defendant No.1 finally on 04.02.2014, the suit came to be filed.

[6]. Thereafter, petitioner filed an application under Order 6 Rule 17 CPC for change of title of the suit from mandatory injunction to specific performance. The trial Court vide the

impugned order dismissed the application on the ground that the cause of action for seeking specific performance has become time barred as the application has been filed beyond the period of three years.

[7]. Learned counsel for the petitioner submitted that in pith and substance, the pleadings in the plaint are for specific performance only, but those were sought by way of issuance of direction to defendant No.1 to execute the sale deed on the basis of terms and conditions as pleaded in the plaint, which arose only from the interpretation of agreement to sell dated 28.08.2006. The amendment in question shall not alter the relief claimed in the suit. No fresh cause of action is sought to be added by way of proposed amendment. The suit for mandatory injunction has been filed within limitation claiming performance of the agreement to sell by means of issuance of direction. The issue regarding court fee can be adverted to by the Court by changing the headnote and the prayer clause.

[8]. Learned counsel further submitted that the original plaint has contained relief of mandatory injunction for execution of sale deed. In such eventuality, it has to be taken that said pleadings have been made as a euphemism for the relief of specific performance. By way of proposed amendment, it would be restated what has already been inherently contained in the

original plaint and for that the Court can ask for payment of requisite court fee/stamp duty.

[9]. Learned counsel by relying upon the decisions rendered in **CR No.1178 of 2014** titled '**Karandeep Singh vs. Bachana Ram and another**' decided on 17.12.2015; **Bhasin Tobaccos Ltd. vs. Gambro Nexim (India) Medical Ltd. & Ors.** **IA 3263/2017 in CS (COMM) 962/2016** decided by the Delhi High Court on 28.11.2017; **CR No.7064 of 2014** titled '**Joginder Pal @ Joginder Pal Sharma vs. Yudhvir Singh**' decided on 21.04.2015 and **CR No.6891 of 2011** titled '**Des Raj vs. Sanjeev Kumar**' decided on 05.12.2012 contended that the only words 'specific performance' are sought to be inserted in prayer clause of the suit. The pleadings would remain the same viz-a-viz. cause of action. Necessary court fee has already been paid. Agreement to sell is a registered agreement in the instant case, but possession has not been delivered.

[10]. I have considered the submissions made by learned counsel for the parties.

[11]. Mandatory injunction seeking direction for execution of a sale deed is act of euphemism. In strict sense it is not a relief of mandatory injunction, rather aim is to get the enforcement of agreement to sell under the colour of mandatory injunction. Real intention is to seek specific performance for which only issue of

court fee is to be seen. The plaintiff has already affixed the ad valorem court fee, therefore, the impediment in that context has already been cleared and no limitation is attracted as the petitioner does not wish to change the body of the plaint and cause of action. In such a scenario, the limitation would be a mixed question of law and facts and can only be considered during course of trial.

[12]. It is a settled principle of law that all bona fide amendments should be allowed, irrespective of delay in filing the application, if the cause of action is not going to be changed by the proposed amendment. Delay at the threshold of bona fide character of proposed amendment cannot be entertained as the bona fide of the plaintiff lies in her intention to get the agreement to sell enforced. The entire body of the plaint is not sought to be amended except the headnote and prayer clause. It is to be seen during trial whether the proposed amendment has been constituted with a view to add a new cause of action or it was already pleaded in the original plaint.

[13]. For the reasons recorded in the preceding paras, I find that the cause of action would remain the same. No limitation is attracted for incorporating bona fide amendment, if cause of action is not going to be changed by way of amendment in question. The facts and circumstances of the case are peculiar

enough to be entertained on positive note. Consequently, this revision petition is allowed. The impugned order dated 12.07.2018 passed by the Addl. Civil Judge (Sr. Divn.) Sonipat, is set aside. Application under Order 6 Rule 17 CPC for amendment of the plaint is hereby accepted. Normal consequences to follow.

November 22, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No