

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7842 of 2015(O&M)
Date of Decision: 29.08.2019

Ravinder Kaul and othersPetitioners

Versus

Mrs. Neelam Rani and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Pankaj Jain, Advocate
for the petitioners.

Ms. Deepshikha Chauhan, Advocate
for respondent No.1.

Mr. Tarun Yadav, Advocate for
Mr. Tapan Yadav, Advocate
for respondent No.2.

Mr. Sudhir Aggarwal, Advocate
for respondent No.3.

None for respondent No.4.

Mr. Rajesh Lamba, Advocate
for respondent No.5.

Mr. Gaurav Kalsi, Advocate
for respondent No.6.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 06.01.2015

passed by Civil Judge (Junior Division), Gurgaon to the extent of declining the prayer for amendment of the plaint.

[2]. Plaintiff filed a suit for declaration to the effect that he is absolute owner of plot No.C-2408, Sushant Lok, Phase-I, Sector 29, Gurgaon and permanent and mandatory injunction against the defendants, restraining them from interfering in the possession of the plaintiff and cancellation of sale deed, agreement to sell and GPA in favour of Usha Jain.

[3]. Para Nos.5 and 9 of the plaint are necessary to be highlighted hereasunder:-

“5. That the pursuance of the agreement the plaintiff paid Rs.60,000/- to defendant No.1 i.e. Mrs. Neelam Rani on 29.04.1994 as consideration for the said plot and against the said payment of Rs.60,000/- the defendant No.1 Mrs. Neelam Rani issued the receipt dated 29.04.1994 to the plaintiff and vide the said receipt the defendant No.1 agreed to sign some other documents in connection with change of title in name of the plaintiff as and when required by the defendant No.4, M/s Ansal Properties and Infrastructure Ltd. formerly known as Ansal Properties and Industries (P) Ltd.

9. That the plaintiff several times called upon the defendant No.1 and 2 and requested to execute and register the sale deed in favour of plaintiff and to deliver those documents but they never paid heed to it, instead they did the illegal and criminal act of transferring the

said property to other buyer after having been received the entire sale price from the plaintiff and handing over original documents to the plaintiff.”

[4]. In para No.14 of the plaint, the plaintiff has pleaded that cause of action for filing the suit firstly arose when defendant No.1 refused to execute and register the sale deed in favour of the plaintiff and to deliver the documents related to the aforesaid property as agreed vide receipt dated 29.04.1994. The cause of action again arose on 01.04.2008 when defendant No.3 threatened to raise construction over the suit property.

[5]. The suit was filed in the month of April 2008. In the written statement dated 12.05.2008 filed by defendant No.3, following pleadings were made in para No.9 of the written statement:-

“9. That the plaintiff has not approached the Hon'ble Court with clean hands and has concealed true and material facts with ulterior motive and deign. The true facts are that the answering defendant is bona fide purchaser of the plot in question for valuable sale consideration. The originally Ms. Neelam Rani daughter of Khem Chand was owner in possession of a plot No.2408, Block-C in Sushant Lok-I, Gurgaon, measuring 51.25 sq. meters vide sale deed vasika No.10658 dated 08.03.1994 and possession of said plot was also handed over to Neelam Rani on 08.03.1994, copy of the sale deed as well as possession letter is annexed herewith.

Smt. Neelam Rani sold the said plot to Bhupender son of Mahender Singh resident of Sauti, District Sonapat, vide sale deed vasika No.18089 dated 10.12.2004 for a valuable sale consideration of Rs.1,25,000/- and actual physical vacant possession was handed over to said Bupender and copy of the sale deed is annexed herewith for reference. Said Bhupender sold the said property vide sale deed vasika No.21279 dated 27.01.2005 for valuable sale consideration of Rs.4,80,000/- to Smt. Anita Chandna wife of Sh. Vinod Chandna, resident of B-26, LIC colony, Meera Bagh, New Delhi and the vacant possession of the property was handed over to Smt. Anita Chandna, copy of sale deed is annexed. Smt. Anita Chandna then sold the said property vide vasika No.16088 dated 05.11.2007 for a valuable sale consideration of Rs.8,00,000/- in favour of answering defendant and actual physical possession was also handed over to the answering defendant and since than the answering defendant is coming as owner in possession of the said property, copy of sale deed annexed. All the title deeds in original are in possession of the answering defendant and the answering defendant has also entered into maintenance agreement with Star Estates Management Ltd. a company formed by the colonizer for maintenance of the area known as Suhant Lok. That the service charge bill was issued by the Star Facilities Management Ltd. to the answering defendant for a period from 01.04.2008 to 30.06.2008 on 28.04.2008. Copy of the bill is annexed herewith. The answering defendant has

also paid an amount of Rs.11,000/- towards the water connection vide receipt No.209917 dated 25.03.2008, copy of the receipt is annexed. The actual physical possession of the plot was taken by the answering defendant on 25.02.2008 from the official of the defendant No.4 and a letter to this effect is annexed. That on 25.02.2008 itself, the defendant No.4 issued no objection certificate to the answering defendant in respect of dues towards the plot in question as well as part zoning plan showing gate location of the plot in question. Copies of NOC and zoning plan are annexed. The answering defendant had also applied for permission to raise building and submitted building plan and the building plan of the answering defendant was approved vide memo No.1954 dated 24.03.2008 by the District Town Planner, Gurgaon, copy of the said letter and building plan is annexed herewith. The plaintiff is neither owner nor in possession of the property in question and has filed this false and frivolous suit against the answering defendant with ulterior motive. The documents relied by the plaintiff are forged and fictitious document managed by the plaintiff in connivance with the defendant No.2. The suit of the plaintiff is imaginary one and is based on documents which do not confer any right, title and interest in favour of the plaintiff.”

[6]. Even after coming to know the stand taken by the defendants on 12.05.2008, no amendment was sought by the plaintiff within the period of three years. Even as per para No.14

of the plaint, the cause of action firstly accrued to the plaintiff on 29.04.1994 and secondly on 01.04.2008. Neither the suit was filed within the period of limitation of three years, nor any application for amendment of the plaint was filed after disclosure of the stand taken by defendants on 12.05.2008.

[7]. A joint application was filed under Order 1 Rule 10 CPC and under Order 6 Rule 17 CPC. In view of ratio laid down in **Nirmal Singh and others Vs. Tarsem Singh and others, 2015 (2) RCR (Civil) 679**, such an application is not maintainable. Under Section 3 of the Limitation Act, onerous duty has been cast upon the Court to see whether the suit is within limitation or not, even if the ground of limitation is not set up as a defence by the defendant in the written statement.

[8]. By way of proposed amendment, plaintiff seeks to convert the suit for declaration and permanent and mandatory injunction into a suit for specific performance and in alternative, in a suit for recovery. As per Article 54 of the Limitation Act, limitation for filing the suit for specific performance is three years from the date fixed for the performance and if no such date is fixed, then, when the plaintiff has noticed that performance is refused. In view of written statement filed by the defendants on 12.05.2008, the plaintiff came to know about the stand taken by the defendants in respect of refusal of the performance. No

application for amendment was filed. At the time of filing the application, the cause of action for filing the suit for specific performance was barred by limitation.

[9]. Under first part of Article 54 of the Limitation Act, once the date for performance of contract has been fixed by the parties, the limitation starts to run from that date and the specific performance of the agreement could be sought within three years from that date unless parties by an agreement extend the date fixed. When the time for performance of agreement to sell is not specified, then the suit will be governed by second limb of Article 54 of the Limitation Act. The suit for specific performance can be filed within three years when the plaintiff has noticed that performance is refused by the defendants. In view of filing the written statement on 12.05.2008, the plaintiff had noticed refusal of performance of agreement to sell by the defendants, still no application was filed for amendment of the pleadings within three years.

[10]. In view of **Ahmmadsahab Adbdul Milla (dead) by proposed LRs Vs. Bibijan and others, 2009(2) RCR (Civil) 788,** the expression “**date fixed for the performance**” is a crystallized notion. It is clear from the fact that the second part “**time from which period begins to run**” refers to a case where no such date is fixed. It implies that when the date is fixed, it

means that there is a definite date fixed for doing a particular act. Even in the second part, the stress is on “**when the plaintiff has noticed that performance is refused**”. Again there is definite point of time when the plaintiff notices the refusal. Therefore, in both the eventualities, definite dates have necessary meaning in terms of Article 54 of the Limitation Act. The Court is not supposed to find out any other intention of the parties from any other circumstances.

[11]. Plaintiff had the notice of refusal. Even in para No.14 of the plaint, first accrual of cause of action has been specifically pleaded w.e.f. 29.04.1994 and second from 01.04.2008. From the aforesaid dates, the claim put forward by the plaintiff in terms of proposed amendment cannot be sustained.

[12]. In view of ratio laid down in **State of Punjab and another Vs. Balkaran Singh, (2006) 12 SCC 709**, limitation of three years starts when the right to sue first accrues. Once the time starts running with the accrual of right, then it would not stop. Under Article 58 of the Limitation Act, in a declaratory suit, the cause of action would be barred by limitation as the time does not stop to run once it has started to run. The suit for declaration is governed by Article 58 of the Limitation Act and the period is three years and the terminus *au quo* is “**when the right to sue first accrues**”.

[13]. In view of *Khatri Hotels Private Limited and another Vs. Union of India and another, (2011) 9 SCC 126*, challenge has to be made within a period of limitation of three years from the date of knowledge under Article 58 of the Limitation Act and limitation which once started, would not stop. When the suit is based on multiple causes of action, the period of limitation will begin to run from the date when right to sue first accrues. Successive violation of the right will not give rise to fresh cause and the suit will be beyond limitation. A clear departure from the language of Article 120 of 1908 Act of the Limitation Act has been made in Article 58 of 1963 Act. The word “**first**” has been designedly used between the words “**sue**” and “**accrued**”.

[14]. The proposed amendment in question is definitely beyond the limitation and under Section 3 of the Limitation Act, a mandatory duty has been cast upon the Court to see whether the suit is within limitation or not, irrespective of the fact whether the limitation has been set up as a ground of defence or not. Section 3 of the Limitation Act is mandatory and it would be an onerous duty of the Court to see mandatory aspect of the case. If the suit is found to have been instituted after the period of limitation, then the Court has to pass necessary order in that context. Similar is the situation in case of seeking amendment in the pleadings. If the cause of action for amendment is found to

be barred by limitation, then the aforesaid principle can be resorted to as there cannot be any abandonment of legal plea of limitation.

[15]. In view of aforesaid legal position, at this stage without embarking upon merits of the case, I deem it appropriate to dismiss this revision petition as the suit has already reached the stage of plaintiff's evidence.

29.08.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No