

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

Date of Decision-23.04.2019

1. CR No.8469 of 2018(O&M)

Bharpur Singh ... Petitioner

Versus

Kuldeep Singh and another ... Respondents

2. CR No.1168 of 2019(O&M)

Kuldeep Singh ... Petitioner

Versus

Bharpur Singh and another ... Respondents

3. CR No.2327 of 2019(O&M)

Bharpur Singh ... Petitioner

Versus

Kuldeep Singh and another ... Respondents

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

Present: Mr. Rakesh Chopra, Advocate for the petitioner
in CR No.8469 of 2018 and CR No.2327 of 2019 and
for respondent No.1 in CR No.1168 of 2019.

Mr. Nikhil K. Chopra, Advocate for the petitioner
in CR No.1168 of 2019.

Mr. H.P.S. Ghuman, Advocate for respondent No.2
in CR No.8469 of 2018.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.8469 of 2018 titled
Bharpur Singh Vs. Kuldeep Singh and another, CR No.1168 of
2019 titled Kuldeep Singh Vs. Bharpur Singh and another and CR

No.2327 of 2019 titled Bharpur Singh Vs. Kuldeep Singh and another are being decided. Facts are being culled out from CR No.8469 of 2018.

[2]. Brief facts are that plaintiff/petitioner Bharpur Singh filed a suit for specific performance on the basis of agreement to sell dated 10.10.2012 executed by defendant/respondent No.1 Kuldeep Singh in favour of the plaintiff/petitioner. Plaintiff pleaded that defendant No.1 entered into agreement to sell dated 10.10.2012 with the plaintiff for selling the suit property fully detailed by letter 'X' in the headnote of the plaint for a total sale consideration of Rs.2,77,00,000/-. Defendant No.1 received the entire sale consideration at the time of execution of agreement to sell and also delivered the possession of the suit land in favour of the plaintiff/petitioner. Plaintiff further pleaded that he is in actual, peaceful, physical, continuous and uninterrupted possession of the suit property. The date for execution and registration of sale deed was fixed as 30.11.2012. The original owner of the suit property is defendant No.2 and he had executed agreement to sell in favour of defendant No.1. Plaintiff/petitioner also pleaded that defendant No.1 did not execute the sale deed, rather requested the plaintiff that he will execute the sale deed within few days due to some family problem. Thereafter, despite so many requests, defendant No.1 did not execute the sale deed. On the other hand, plaintiff/petitioner always remained ready and willing to perform his part of contract. Plaintiff/petitioner got issued a registered legal

notice dated 23.09.2015 to defendant No.1 through his counsel and requested defendant No.1 to execute and get the sale deed registered as per terms and conditions of the agreement to sell dated 10.10.2012 on 08.10.2015. On 08.10.2015, i.e. the date fixed for execution and registration of sale deed as per legal notice dated 23.09.2015, the plaintiff attended the office of Sub Registrar, Fatehgarh Sahib along with necessary expenses and remained present there from 9 A.M to 5 P.M, but the defendants did not turn up to perform their part of obligation. Plaintiff got his presence marked in the office of Sub Registrar, Fatehgarh Sahib.

[3]. Thereafter, the suit for specific performance came to be filed. Para Nos.15 and 16 of the plaint are necessary to be quoted hereasunder for the purpose of appreciating the accrual of cause of action as per pleadings in the original suit.

“15. That primarily the plaintiff is entitled for the relief of specific performance of the contract of sale and if at any stage, this Hon’ble Court comes to the conclusion that the plaintiff is not entitled to the relief of specific performance, then the plaintiff is entitled to recover Rs.2,77,00,000/- already paid by the plaintiff to the defendant No.1 at the time of execution of agreement to sell dated 10.10.2012 as total sale consideration, along with interest at the rate of 18% per annum from the date of agreement to sell till the final realization of the amount, from the defendant No.1.

16. That the cause of action arose to the plaintiff to file the present suit on 10.10.2012, the date of execution of agreement to sell, on 30.11.2012, the date fixed for execution

and registration of sale deed, on 08.10.2015 the date fixed for execution and registration of sale deed as per notice dated 23.09.2015 and on each and every occasion, when the plaintiff requested the defendants to execute and get the sale deed registered and a few days back when the defendants totally refused to admit the claim of the plaintiff, rather threatened to alienate the suit property to some other person and further intended and threatened to interfere into the peaceful possession of the plaintiff over the suit property and also threatened to dispossess the plaintiff from the same, forcibly and illegally and the said threats of the defendants are still continue which provides a continuous cause of action to the plaintiff to file the present suit. Hence the present suit is being filed within limitation.”

[4]. In para No.17 of the plaint, the plaintiff has pleaded that earlier a suit for mandatory injunction and permanent injunction was filed by the plaintiff/petitioner on the basis of agreement to sell dated 10.10.2012. The plaint was rejected as the suit for mandatory injunction was not maintainable. The present suit was filed on 25.01.2016.

[5]. Thereafter, the application under Order 6 Rule 17 CPC was filed for amendment of the plaint on 26.04.2017. Plaintiff sought to amend the original suit by deleting relief of permanent injunction for restraining the defendants from interfering in the peaceful possession of the plaintiff and sought to add relief of possession in para No.2 of the plaint. Plaintiff also sought to delete para Nos.12 and 16 of the plaintiff and sought to add words in the first line of heading of the plaint and in second line of the prayer

clause i.e. “possession by way of”. He also sought to add pleadings in para Nos.2, 3, 5(a), 5(b), 5(c), 16 and 17 of the plaint.

CR No.8469 of 2018

[6]. Plaintiff/petitioner has preferred this revision petition against the order dated 15.11.2018 passed by Civil Judge (Senior Division), Fatehgarh Sahib whereby application under Order 6 Rule 17 CPC filed by the plaintiff/petitioner for amendment of plaint was dismissed.

[7]. Perusal of the application for amendment of plaint would show that the plaintiff sought exhaustive amendment in the entire suit. The factum of agreement to sell dated 03.06.2011 executed by defendant No.2 in favour of defendant No.1 is sought to be inserted on the ground that the said agreement to sell was executed in respect of land measuring 63 kanals 18 marlas and the same was supplied by defendant No.1 to the plaintiff. The original agreement to sell is in possession of defendant No.1. The said agreement to sell was executed between defendants No.1 and 2 as defendant No.1 was to establish a residential colony in the aforesaid land measuring 63 kanals 18 marlas for which sanction was required from Greater Mohali Area Development Authority (GMADA)/Punjab Urban Development Authority (PUDA). Such sanction was mandatory and therefore, Clause-8 was specifically inserted in the agreement to sell dated 03.06.2011 vide which defendant No.1 could have sold the plots only after obtaining approval from PUDA

and Clause-9 was indicative of the fact that defendant No.2 had agreed to sign the necessary documents at the instance of defendant No.1 for the purpose of obtaining sanction from PUDA. The agreement to sell dated 03.06.2011 was made part of agreement to sell dated 10.10.2012. Defendant No.2 had not got approval from GMADA/PUDA upto 30.11.2012 as per agreement to sell dated 03.06.2011 and therefore, defendant No.1 had no saleable right/title qua the suit property as on 30.11.2012. Therefore, he was not competent to execute and register the sale deed on 30.11.2012 in favour of the plaintiff according to terms and conditions of the agreement to sell dated 10.10.2012. The factum of full payment was also sought to be inserted with reference to receipt dated 10.10.2012 on the last page of the agreement to sell. Plaintiff also sought to incorporate the factum of Civil Suit No.476 of 2013 filed on 01.10.2013 by defendant No.2 against defendant No.1 and others in the context of forfeiting the earnest money as defendant No.1 could not comply with the terms and conditions of the agreement to sell dated 03.06.2011. Defendant No.2 also sought permanent injunction against defendant No.1, restraining him from raising any construction over the land measuring 63 kanals 18 marlas. The said suit was ultimately dismissed as withdrawn on 24.05.2016.

[8]. Prayer for amendment of the plaint has been declined by the trial Court on the plea that amendment in a suit barred by time cannot be allowed and the admissions made in the pleadings

cannot be allowed to be withdrawn. It is not a case of subsequent events which have compelled the plaintiff to seek amendment in the plaint, rather all the facts were in the knowledge of the plaintiff at the time of filing of the original suit. The factum of delivery of possession at the time of execution of agreement to sell is sought to be withdrawn and a plea of possession is sought to be added. In a way, suit for permanent injunction is sought to be withdrawn and a suit for possession is sought to be added. The plea raised by the plaintiff/petitioner is that the necessary facts were disclosed to the earlier counsel, but the same could not be incorporated in the original plaint.

[9]. Learned counsel for the petitioner by referring to **Rojasara Ramjibhai Dahyabhai Vs. Jani Narottamdas Lallubhai (dead by LRs) and another, AIR 1986 Supreme Court 1912, Atul Kumar and others Vs. Rishi Pal and another, 2015(1) Law Herald 612, Shri Satya Dev Shakuntla Devi Educational Trust, Etawah Vs. Addl. District Judge/Spl. Judge (SC & ST) and others, 2014(4) Civil Court Cases 235 (Allahabad), Satti Paradesi Samadhi & Philliar Temple Vs. M. Sankuntala (D) through LRs. and others, 2014(4) Civil Court Cases 056 (SC), Prithi Pal Singh and another Vs. Amrik Singh and others, 2014(1) Civil Court Cases 797 (SC), N.C. Bansal Vs. Uttar Pradesh Financial Corporation and another, 2018(2) Civil Court Cases 193 (SC), Ram Niwas Vs. Bramchari and others, 2009(3) PLR 716, Parappalliyil Dasan Vs. K.K. Sasi, 2009(19) RCR**

(Civil) 663 (Kerala), Raj Kishore Vs. Sukhvinder Kaur and another, 2000(7) AD (Delhi) 615, K. Krishnan Vs. A. Valarmathi, 2017(1) RCR (Civil) 36, Ramesh B. Desai and others Vs. Bipin Vadilal Mehta and others, 2008(1) RCR (Civil) 921, Puran Ram Vs. Bhaguram and another, 2008(2) RCR (Civil) 499, Ragu Thilak D. John Vs. S. Rayappan, 2001(1) RCR (Civil) 726, Mohd. Ahmed Vs. Harish Kumar Aggarwal, 2012(26) RCR (Civil) 202 (Delhi) and M/s Rangji Land Developers and Promoters Pvt. Ltd. Vs. Harminder Singh and another, 2013(33) RCR (Civil) 203 contended that the suit filed within three years after obtaining permission is not barred by limitation. Limitation is a mixed question of law and facts, therefore, the amendment cannot be refused on the ground that the suit was barred by limitation. The application for amendment of plaint needs to be considered on merits before consideration of application for rejection of plaint under Order 7 Rule 11 CPC. The amendment in the plaint cannot be rejected on the plea of delay and limitation. When the issue of limitation requires an inquiry into facts, then the same cannot be tried as preliminary issue. The introduction of a new ground to support the relief cannot be treated to be a ground for presuming the suit to be barred by limitation. The amendment once allowed would relate back to the date of institution, however in appropriate case, the Court may restrict the application for doctrine of relation back and permit the application of the amendment from the date when the amendment is allowed. Inclusion of relief of recovery of

possession of property in a suit for specific performance is an ancillary relief and the party has a right to claim the same which was omitted at the time of filing of the suit, rather converse pleadings were made on the basis of full payment coupled with delivery of possession. Rigor of proviso to Rule 17 of Order 6 CPC will not apply where relief of possession in a suit for specific performance is sought. Proviso is to be harmoniously construed with proviso to Section 22(2) of the Specific Relief Act and Section 55(1)(f) of Transfer of Property Act. The prayer for possession would only help to achieve object of Section 22 of the Specific Relief Act. Even if, the pleadings were made in the suit that the plaintiff was in possession of the suit property, still such pleadings would not preclude the plaintiff from seeking appropriate amendment to incorporate prayer for possession in the plaint.

[10]. I have considered the aforesaid precedents in the light of pleaded case.

[11]. In the original suit filed by the plaintiff for specific performance, there is no averment made in respect of earlier agreement to sell dated 03.06.2011 executed between defendants No.1 and 2. On the date of filing of the suit and on the date of filing of application for amendment, the original cause of action as per pleaded case had become time barred. Plaintiff himself has pleaded in para No.17 that cause of action accrued on 10.10.2012, 30.11.2012 and 08.10.2015 i.e. the extended date in view of legal

notice dated 23.09.2015. In view of factual details of the present case, no such consideration can be made on the basis of aforesaid precedents which were applicable in the facts and circumstances of those cases. In the instant case, no suit for specific performance was filed within limitation of three years from first accrual of cause of action. Once the limitation starts, it will not stop.

[12]. Evidently, the agreement to sell is dated 10.10.2012 and target date for execution and registration of sale deed was fixed as 30.11.2012. The suit was filed on 25.01.2016 and the application for amendment of plaint was filed on 26.04.2017. On the date of filing of the suit on 25.01.2016, the cause of action in respect of agreement to sell dated 10.10.2012 and target date for execution and registration of sale deed as 30.11.2012 had become time barred. As per para No.16 of the original plaint, the plaintiff has pleaded that cause of action arose to the plaintiff to file the suit on 10.10.2012, 30.11.2012 and 08.10.2015 i.e. the extended date fixed by way of issuing legal notice dated 23.09.2015. Once the limitation starts running from first accrual of cause of action, it will not stop by subsequent enlargement of cause of action as per averments in the plaint. The first cause of action is the target date on which sale deed was to be executed. The alleged subsequent act in the context of not perfecting the title of the vendor for want of sanction from PUDA/GMADA, would not curtail cause of action to file the suit within limitation of three years as per Article 54 of the Limitation Act. Limitation of three years starts when the right to sue

first accrues. Once the time starts running with the accrual of the right, then it will not stop. Under Article 58 of the Limitation Act, the cause of action was barred by limitation in a declaratory suit 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 of three years is to be counted when the right to sue first accrues. The time cannot be extended by the plaintiff on the plea of giving legal notice to the defendants. The successive violation of the right will not give rise to any fresh cause of action and the suit will be time barred. A clear departure from the language of Article 120 of 1908 Act of the Limitation has been made in Article 58 of 1963 Act. The word “first” has been designedly used between the word “sue” and “accrued”. It is obligatory on the part of the Court to see whether suit is barred by limitation even if, the plea of limitation was not set up as a ground of defence by the defendant. Section 3 of the Limitation Act is mandatory and puts an onerous duty on the Court to see whether suit is within limitation or not.

[13]. The proposed amendment is revolving around the original agreement to sell dated 03.06.2011 which was made part of agreement to sell dated 10.10.2012. Any contingency in respect of pre-condition for obtaining permission from PUDA/GMADA could not have prohibited the plaintiff from filing the suit for specific performance within limitation of three years. Such impediment cannot be treated to be a condition for grant of specific performance in view of ratio laid down by the Hon’ble Apex Court in

Vishwanath Sharma Vs. Shyam Shakar Goel and another, 2007(1) SCC 595, wherein it was held that contingency in respect of pre-condition for obtaining permission from the authority could not have prohibited filing of suit within the period of limitation as the same cannot be treated to be a condition for grant of specific performance. There was no such impediment on the transfer. Lack of permission cannot act as absolute bar on a decree being passed. At the most, it may have an effect on the execution if ultimately permission is not granted. The permission from the authority is not a condition precedent for grant of decree for specific performance. The aforesaid view was also endorsed by the Hon'ble Apex Court in **Fatehji and Company and another Vs. L.M. Nagpal and others, 2015(2) RCR (Civil) 999**. Para Nos.6 and 7 of the judgment are necessary to be quoted hereasunder:-

“6. We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.

7. The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1.8.1976 sought for by the defendants expired on 1.2.1977. The present suit seeking for specific performance was filed by the plaintiffs on 29.4.1994, much beyond the period of three years.”

[14]. In **Narinder Kumar Nangia Vs. Harjinder Pal Singh, 2018(1) Law Herald 337**, this Court has held that once a limitation starts running from first accrual of cause of action, it will not stop by subsequent enlargement of cause of action as per averments in the plaint. Limitation of three years starts from the date fixed for performance of the agreement and if no such date is fixed, then from the date when the plaintiff had noticed that the performance is refused. In **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons and others, 2009(10) SCC 84**, it has opined that while allowing or rejecting the application for

amendment, some basic principles should be kept in mind. The facts which are necessary to be taken into consideration while dealing with the application for amendment are summarized as under:-

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

*(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
And*

(6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

[15]. Evidently, the application for amendment of the plaint was filed on 26.04.2017. Even the suit was filed on 25.01.2016. First accrual of cause of action is beyond the period of three years. As per Clause No.6 of the principles as laid down in **Revajeetu Builders & Developers case (supra)**, the amendment should be declined as a general rule as on the date of filing of the application for amendment, the suit was barred by limitation. As per para No.16 of the plaint, the plaintiff sought to bring the suit within the limitation

on the basis of extended date i.e. 08.10.2015 which was fixed in the legal notice dated 23.09.2015. In a way, the extended date was pleaded on the basis of legal notice.

[16]. In view of ratio laid down in **Shiv Kumar Gupta Vs. Kumkum Gupta and others, 2007(5) RCR (Civil) 465 (Delhi)**, the breach of agreement had already taken place and no extended cause of action can be made by issuing legal notice of the Advocate. Even in view of pleadings in the original plaint, the admissions in the pleadings cannot be allowed to be withdrawn. Even there is no document signed by the parties in the context of any extension of time for execution and registration of sale deed. No such pleadings have been made in the plaint. The averments made in the plaint are totally silent about any document signed by the parties in the context of any extension in time for execution and registration of sale deed at any point of time. Unilateral act of the plaintiff to get the legal notice issued on 23.09.2015, would not suffice to presume any extended date i.e. 08.10.2015 for the purpose of execution and registration of sale deed. Once the facts are apparent on record, it is onerous duty of the Court in terms of Section 3 of the Limitation Act to see whether the suit is barred by limitation or not. If the pleadings have created any illusion in respect of cause of action, then the plea of limitation being a mixed question of law and facts could be construed. Once the pleadings and material on record are apparent, then the Court has to exercise its power to see whether the suit is within limitation or not.

[17]. For the reasons recorded hereinabove, I find that there is no error in the impugned order dated 15.11.2018 passed by Civil Judge (Senior Division), Fatehgarh. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

CR No.1168 of 2019

[18]. This revision petition has arisen from the impugned order dated 15.11.2018 passed by Civil Judge (Junior Division), Fatehgarh Sahib, vide which the application filed by petitioner Kuldeep Singh under Order 7 Rule 11 read with Section 151 CPC was dismissed.

[19]. Since the suit has been held to be barred by limitation in CR No.8469 of 2018, therefore, this revision petition has to be allowed by setting aside the impugned order dated 15.11.2018 passed by Civil Judge (Senior Division), Fatehgarh. Consequently, this revision petition is allowed.

CR No.2327 of 2019

[20]. This revision petition has arisen from the impugned order dated 01.03.2019 passed by Civil Judge (Senior Division), Fatehgarh Sahib vide which the application dated 14.12.2018 for review of the order dated 15.11.2018 passed by the trial Court was dismissed.

[21]. CR No.8469 of 2018 has arisen from the impugned order dated 15.11.2018 passed by Civil Judge (Senior Division),

Fatehgarh. The impugned order has been upheld in the said revision petition. Since review against the said order has been dismissed by the trial Court vide the impugned order dated 01.03.2019, therefore, as a result of observations made in CR No.8469 of 2018, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

23.04.2019
Prince

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