

(Heard through Video Conferencing)

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

**CR-6503 of 2017 (O&M)
DATE OF DECISION: 24.03.2021**

M/s Malibu Estate Pvt. Ltd.

...Petitioner

Versus

Subhram & Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Argued by :Mr. Anurag Jain, Advocate with
Ms. Preeti Taneja, Advocate
For the petitioner.**

**Mr. Sanjiv Aggarwal, Advocate
For respondents.**

ARUN MONGA, J.(ORAL)

1. Petitioner Company (defendant No.1 in the suit) is aggrieved by an order dated 01.08.2017(Annexure P-5) passed by the learned trial Court whereby amendment of the plaint has been permitted. Amongst others, one of the grievances of the petitioner is that the same has been permitted not only highly belatedly being barred by limitation as per Article 58 of the Limitation Act, but even otherwise it seriously prejudices the defendants having been permitted at the fag end of the trial when defendants were about to close their evidence and the matter was almost ripe for final arguments.

2. Before adumbrating further, a succinct narrative leading to the instant proceedings. For the sake of convenience, parties are being

referred herein as per their status in the plaint before the trial Court proceedings.

3. Plaintiffs originally filed a civil suit, *inter alia*, seeking declaration to the effect that they are co-sharers/ co-owners to the extent of 1/4th share in the suit land comprising in *khewat No. 62, khatoni No.68*, rectangle No. 2, *killa No. 14/2(2-4)* as per *jamabandi* for the year 2003-04 situated within the revenue estate of village Fatehpur, Tehsil and District Gurgaon. Further prayer for grant of decree qua partition and possession of their 1/4th share has also been sought in the civil suit. While, at the same time, a cross-suit has been filed by defendant No.1 Company seeking specific performance of the collaboration agreement dated 15.04.2004 executed with plaintiffs qua the same suit land wherein they have sought declaration to uphold the collaboration agreement and its consequential specific performance in respect of same very 1/4th share in the suit land, which has been described as Rectangle No. 12, *killa Nos. 14/2(2-4) and 17(2-2)* stated to be owned by the plaintiffs.

3.1 Long and short, in both the suits it is the same land which is under *lis*. In fact it would be apposite to reproduce the prayer clause of both the suits viz. one filed by respondents herein for declaration and second one for specific performance filed by petitioner Company, respectively, herein below:-

Suit filed by respondents:-

“10. That the plaintiffs pray that a decree for declaration to the effect that the plaintiffs are co-sharer and co-owner in possession of 1/4th share of the above said land mentioned in para No.1 of the plaint and their share be separated by partition and with permanent injunction as a consequential relief restraining the defendants from alienating, making any construction and changing the nature of the suit property and also from interfering in the peaceful

possession of the plaintiff, be passed in favour of the plaintiffs and against the defendants with costs."

Suit filed by petitioner Company

It is, therefore, humbly prayed that in the interest of justice your Honour may very kindly be pleased to pass a decree for declaration to the effect that plaintiffs are exclusive owners in possession of the land bearing Rect. no. 12, killa nos. 14/2(2-4), 17 min North (1-0.5); that defendants have got absolutely no right, interest or title therein and the revenue entries showing the land bearing Rect. no. 12, killa nos. 14/2(2-4), 17(2-2) as joint are illegal, invalid, incorrect and not binding on the plaintiffs; that judgment and decree dated 26.9.87 passed in suit no. 846/1987 by Senior Sub Judge, Gurgaon in suit titled 'Subh Ram and another Versus Smt. Dharam Kaur etc.', consequent mutation no. 1116 and other revenue entries on their basis are also totally incorrect, baseless, untenable, void abinitio, nonest, nullity and not binding on the plaintiffs with consequential relief of permanent injunction restraining the defendants, their agents, servants and persons claiming through or under them from taking forcible possession, dispossessing the plaintiffs, ousting the plaintiffs in any manner or otherwise interfering in their peaceful use and enjoyment of the land bearing Rect. No. 12, killa no. 14/2 (2-4), 17 (2-2) or alienating any part of the aforesaid land and also from selling, leasing mortgaging or creating any third party rights and also a decree for specific performance in respect of the land bearing Rect. no. 12, killa no. 17 min South (1-1.5) and in case the oral private partition is not proved, in that event a decree for specific performance regarding 1/4th share of the defendants in the land bearing Rect. no. 12, killa nos. 14/2 (2-4), 17 (2-2) situated in the revenue estate of Fatehpur, Tehsil and District Gurgaon may kindly be passed in favour of the plaintiffs and against the defendants with costs subject to incurring stamp, registration and miscellaneous expenses by plaintiff no. 1. Defendants may kindly be directed to execute and get registered sale deed regarding the aforesaid land in favour of plaintiff no. 1. Without prejudice to the rights of the plaintiffs in any manner, it is respectfully alternatively submitted that in case the defendants somehow succeed in taking forcible possession or dispossessing the plaintiffs from any part of the land bearing Rect. no. 12, killa nos. 14/2 (2-2), 17 (2-2), in that event a decree for mandatory injunction / possession regarding such portion may kindly be passed in favour of the plaintiffs and against the defendants. Costs of the suit be also awarded to the plaintiffs. Without prejudice to the rights of the plaintiff no. 1 in any manner, it is further respectfully alternatively submitted that in case this Hon'ble Court comes to the conclusion that for some reason the specific performance of the aforesaid agreement of sale

between plaintiff no. 1 and defendants cannot be ordered, only in that event plaintiff no. 1 alternatively prays that a decree for recovery of Rs. 11,42,200/- besides damages caused to the plaintiffs due to non-performance of the agreement of sale by defendants alongwith interest at the rate of 18% per annum with effect from 18.6.2004 till date of repayment alongwith future interest at the rate of 18% per annum from the date of suit till realization may kindly be passed in favour of plaintiff no. 1. Any other relief which this Hon'ble court deems appropriate and suitable be also granted to the plaintiff."

3.2 A perusal of both the prayers in the un-amended suits would show that no doubt in the suit filed by the plaintiffs, *killa* No. 17(2-2) is not stated though on the other hand defendant No.1-Company in the suit for specific performance filed by it, is seeking the performance from the respondents herein, with regard to *killa* No.17(2-2), which only shows that company admitted that at the relevant time respondents had title qua the said *killa* No.17(2-2) and the same has to pass on to defendant No.1 Company pursuant to the collaboration agreement. However, since the respondents herein later backed out from performing their part of agreement/ collaboration agreement, hence the suit for specific performance.

3.3 Merits of the suit for specific performance are not relevant and what is relevant here is that the land in question is the same in the suit for specific performance as well as in the suit for declaration filed by the respondents. It was perhaps keeping the same in mind that subject matter of the property being same as well as parties also the same, both suits were consolidated vide a judicial order passed by this Court in separate proceedings. Thereafter, both the cases are being tried jointly.

3.4 In the aforesaid background, plaintiffs filed an application dated 13.07.2017 stating therein that due to clerical/ typographical

mistake which came to notice of their counsel, though belatedly but was admittedly a serious mistake, and could not be noticed at the time of filing of the plaint, therefore, same needed to be corrected by way of amendment by incorporating *kill*a No.17(2-2). To be noted, relevant revenue record qua declaration of 1/4th share was already appended along with suit wherein aforesaid *kill*a No.17(2-2) wherein it is clearly mentioned in the relevant column showing the respondents herein as the owners/ co-sharers to the extent of 1/4th share.

3.5 The said amendment was opposed tooth and nail before the trial Court but the objections filed by defendant No.1 Company did not find favour with the trial Court and hence the impugned order.

4. I have heard rival contentions of both the counsel and I do not find any material irregularity or any other fault with the order passed by the trial Court, assailed in these proceedings. No interference qua the same is warranted for the reasons stated hereinafter.

5. The first and foremost objection qua the amendment is that same is barred by Limitation Act. There is no quibble as regards the proposition of law canvassed by learned counsel for the petitioner herein, that something which stands extinguished or forfeited by operation of law and/ or passage of time cannot be revived at a later stage and the limitation cannot be extended. A relief available to the litigant, though available earlier but not sought, the same by operation of law/ limitation would stand extinguished. I am in agreement with the said proposition strenuously argued by learned counsel for the petitioner. However, present is a case of a clerical error where the plaintiffs, in no uncertain terms, have made following recitals in the very first para of his plaint:-

“That the plaintiffs are co-sharer, co-owner in possession of 1/4th share of land comprising in Khewat No.62, Khatoni No.68, Rect. No.12, Killa No.14/2(2-4) situated within the revenue estate of village Fatehpur, Tehsil and Distt. Gurgaon vide jamabandi year 2003-2004. Copy of jamabandi is enclosed herewith.”

6. A perusal of above leaves no manner of doubt that plaintiffs are seeking declaration of 1/4th share of the land as per the revenue entries in the jamabandi at the time of filing of the suit, wherein it is stated to be the land located in Khewat No. 62, Khatoni No.68, Rectangle No.12, Killa No.14/2(2-4), total measuring 04 kanal 06 marlas.

7. In the premise, neither the amendment changes the area of the land nor its location nor even otherwise in terms of the share of the plaintiff which would remain confined to 1/4th as per the original suit. Therefore, to say that the claim of the plaintiffs is barred by time is highly inappropriate as the plaintiffs at the time of filing of the suit claim themselves to be co-owner/ co-sharer to the extent of 1/4th share qua the same very land for which they had entered into collaboration agreement with the defendant Company.

8. Even otherwise, as per the contents of application for amendment, plaintiffs do not at this stage seek to adduce any additional evidence qua the amendment.

9. Another aspect, not to be overlooked is that before entering into agreement for specific performance the defendant had carried out due diligence to ascertain the claim of the plaintiffs qua 1/4th share and, therefore, it proceeded for specific performance thereof. Defendant No.1 Company claimed to have acquired the rights in the suit land from respondents herein and it is but natural that only if they had a title therein, then only they could have further passed it on to defendant No.1

Company. It was in this peculiar circumstance that trial Court observed as below:-

“5. Admittedly, the suit was filed on 29.01.2020. The present suit is for seeking declaration, partition and permanent injunction. The Jamabandi, which is Ex.P4 on the file shows the parties to the suit as owners in column No.5 and I column No.7, both killa Nos. 14/2 and 17 are mentioned and the total land measuring is 4 kanal 6 marla. The relief of declaration is intrinsic in the relief for partition. In any suit for partition, if decreed the parties to the suit are declared as owners of their respective shares. The plaintiffs have undertaken in the application itself that they would not lead any evidence. The proposed amendment will not enlarge the scope of the suit rather they will complete its scope of the suit rather they will complete its scope as in a suit for partition the entire subject matter must be included. The proposed amendment does not introduce any fresh cause of action nor does it change the nature of the suit. No doubt the application is belated as the omission sought to be rectified persisted for about 7 years. Such a glaring oversight of the plaintiffs is also astonishing. Nevertheless, the plaintiffs cannot be precluded for correcting the error as due to this lapse of time no right has accrued in favour of the defendants. However, inconvenience in facing such an application at a belated stage can always be compensated by way of costs.”

A perusal of the above would show that proposed amendment neither changes the nature of the suit nor it entertains any fresh cause of action though the same is no doubt at a belated stage for which trial Court has rightly observed that delay in amendment does not reciprocal legal right in favour of defendant No.1 Company. The said amendment by any stretch is not hit by Article 52 of the Limitation Act.

10. As regards the reliance placed by learned counsel for the petitioner on Apex Court judgments rendered in **Khatri Hotels Private Limited & Anr. Vs. Union of India & Anr.**¹ and **Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and others**², the same seems to be on a misplaced understanding that the case of the respondents herein is

¹ Civil Appeal No.7773 of 2011 arising out of SLP (C) No. 22126 of 2009 decided on 09.09.2011

² Civil Appeal No.1700 of 2007 arising out of SLP(C) 1729 of 2006 decided on 30.03.2007

barred by limitation. Both the aforesaid judgments lay down a proposition of law which no doubt would have been applicable to the case of the petitioner Company had it been a case of amendment being barred by limitation. Even otherwise, the explanation given in the aforesaid cases for seeking amendment did not find favour with Apex Court as the same was not only belated, but was also sought to be done only after opposite party brought forward the lacuna in the course of trial. Instant is a case where no such advantage is being taken by the plaintiffs as at the time of filing of their suit for declaration of 1/4th share of land, such a prayer was already there on record. As observed earlier, they are not changing the nature of claim and wants to incorporate only recitals/*kill*a number of the land which by inadvertence they omitted to mention at the time of filing of the suit.

11. On the flip side, in case the proposed amendment is not allowed, I am in agreement with arguments of learned counsel for respondents that respondents-plaintiffs would be highly prejudiced on the ground of partition proceedings being rendered nullity due to omission of said *kill*a number as the same would lead to mere partial partition qua the 1/4th of the joint land in which the plaintiffs claim their ownership, while on the other hand, if amendment is allowed, no prejudice would be caused to the petitioner Company herein as the same would not lead to any further delay as the plaintiffs themselves have made statement before the trial Court that they would not be adducing any additional evidence qua the amendment. Accordingly, on conclusion of defendant's evidence, the suit can proceed further as before.

12. In the parting it would also be worthwhile to observe that plaintiffs are not seeking any amendment in the contents of plaint other than addition of omitted *kill*a number 17(2-2) in the head note of prayer clause of plaint and, therefore, ordinarily no amended written statement is required, since there is no change to the facts. However, it is left open for the trial Court to decide at an appropriate stage in case any such eventuality arises.

13. Revision petition stands dismissed.

(ARUN MONGA)
JUDGE

24.03.2021
Jiten

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