

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-32 of 2017(O&M)
Date of decision: 06.08.2022

Roop Chand

..Petitioner

Versus

M/s Vairagi Projects Pvt. Ltd and others

..Respondents

CR-9031 of 2017(O&M)

Shri Balraj and others

..Petitioners

Versus

M/s Vairagi Projects Pvt. Ltd and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pawan Kumar, Sr. Advocate, with
Mr. Surya Kumar, Advocate
for the petitioner (in CR-32 of 2017)

None for the petitioners (in CR-9031 of 2017)

Mr. Shekhar Verma, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

These two revision petitions have been preferred by different defendants assailing the correctness of the common order passed by the trial court on 17.11.2016, permitting the plaintiff (the respondent herein) to amend the plaint, in order to incorporate the relief of specific performance of the agreement.

The plaintiff, while filing the suit on 13.06.2012, asserted that an agreement dated 01.04.2009, was entered between the plaintiff and the defendants which was styled as a development agreement as the land was in the process of being acquired. The defendants authorised the plaintiff to make efforts to get the land released from acquisition and thereafter, get all

the relevant documents executed. The plaintiff while filing the suit alleged that the defendants should be restrained from interfering in its possession.

During the pendency of the suit, the notifications under Section 4 and 6 of the Land Acquisition Act, 1894, intending to acquire the land were allowed to lapse.

Prompted by the aforesaid development, the plaintiff filed an application under Order VI Rule 17 CPC for permission to amend the prayer clause in order to incorporate the relief of specific performance of the agreement. The court has allowed the same. This revision petition has been filed to assail the correctness of the aforesaid order.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

The learned senior counsel, taking a serious objection to the correctness of the order passed, submits that the trial court has erred in allowing the application for amendment without examining “as to whether the agreement in question is genuine or not? He further submits that the suit for specific performance of the agreement had become time barred on the day on which the application for amendment was filed.

There is no dispute regarding the fact that during the pendency of the suit, the land in question has become free from compulsory acquisition. The development agreement is a hybrid agreement which not only relates to the development which has to be carried out but also entitles the plaintiff to out rightly purchase the property after the land is free from compulsory acquisition. In such circumstances, the limitation for filing the suit for specific performance of the agreement would begin to run from the date the cause of action for filing such suit would arise.

Article 54 of the Schedule attached to the Limitation Act, 1963 provides that the time from which the period will begin to run for filing the suit shall be in two parts. In the first part, the period would begin to run from the date fixed for performance of the agreement and in the second part it is provided that if no such date is fixed, when the plaintiff has notice that the performance has been refused.

In the present case, the question of limitation is a mixed question of fact and law. Hence, the Court should be in a better position to decide the same after the parties have lead their evidence.

It is not in dispute that the initial suit filed for grant of decree of permanent injunction was based on the aforesaid agreement dated 01.04.2009. Hence, there is no fundamental change in the suit. Only the relief, which subsequently become available, has been permitted to be incorporated.

Hence no ground to interfere is made out.

Both the revision petitions are dismissed.

Needless to observe that the observations made by this court or by the trial court while allowing the application for permission to amend the plaint, shall not be construed as final expression on the merits of the case.

All the pending miscellaneous applications, if any, are also disposed of.

August 06, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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