

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

(114)

CR-1981-2023

Date of Decision : March 29, 2023

Raj Kumar**.. Petitioner****Versus****Parveen Kumar and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Rakesh Dhiman, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present civil revision petition, the challenge is to the order dated 20.12.2022 passed by the Civil Judge (Jr. Division), Gurugram by which, the application of the petitioner-plaintiff for the amendment of the plaint has been declined.

Certain facts needs to be mentioned here for the correct appreciation of the issue in hand.

Petitioner-plaintiff claimed that there was an agreement to sell between respondent/defendant No.1 and the plaintiff dated 19.02.2014 for selling the land measuring 2 Bighas, 12 Biswa and 3 Biswansi for an amount of Rs.50 lacs, out of which, Rs.30 lacs was paid to respondent No.1 as the earnest money. As per the plaint, the agreement to sell dated 19.02.2014 was to be converted into the sale deed within a period of one year of signing of the agreement to sell i.e by 19.02.2015.

According to the petitioner-plaintiff, three months after the execution of the agreement to sell in question i.e. on 09.05.2014, respondent

No.1 executed a release deed No.3136 dated 09.05.2014 in favour of his wife and children i.e respondents No. 2 to 4 qua the same property. Realizing that respondent No.1 has resiled from the agreement to sell in question, a suit was filed by petitioner on 03.06.2014 challenging the said release deed of the property in question in favour of defendants No. 2 to 4.

Upon notice of motion, respondent/defendant No.1 i.e the person, who had executed an agreement to sell dated 19.02.2014 with the petitioner did not appear but defendants No. 2 to 4, who were the beneficiary of the release deed dated 09.05.2014 denied the execution of the said agreement to sell. The suit is still being tried by the trial Court.

In the year 2021, the petitioner-plaintiff moved an application under Order 6 Rule 17 of the CPC for amendment of the plaint so as to include his claim for specific performance of the agreement to sell dated 19.02.2014, which application has been declined by the trial Court vide order dated 20.12.2022 on the ground that not only the said amendment will change the nature of the suit but even the relief which is being sought in the amendment of the plaint, is time barred keeping in view the facts and circumstances of the present case.

The impugned order dated 20.12.2022 passed by the trial Court rejecting the prayer of the petitioner for amendment of the plaint is under challenge in the present civil revision petition.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is a conceded fact before this Court that as per the alleged agreement to sell dated 19.02.2014, the sale deed was to be recorded on or before 19.02.2015 qua the property in question.

Learned counsel for the petitioner has not been able to dispute the fact that in case the sale deed was not got registered in pursuance to the alleged agreement to sell dated 19.02.2014, the cause of action would have accrued to the petitioner-plaintiff on 19.02.2015 to avail appropriate remedy for the specific performance of the said agreement to sell and for seeking the said relief, the limitation is three years from the date cause of action accrued.

Learned counsel for the petitioner submits that once the suit filed by the petitioner-plaintiff for the cancellation of the relinquish deed by respondent No.1, in favour of the other respondents was pending, the operation of the limitation period of three years will stop.

Though the said argument has been raised but no provision of law has been cited to support the said argument. Merely that the relinquish deed dated 09.05.2014 qua the same property was under challenge, does not mean that the limitation period to file a suit for specific performance will not run from the date cause of action has accrued. Hence, the argument being raised by the learned counsel for the petitioner that even as of now, the suit for specific performance is within limitation, cannot be accepted.

Even otherwise, in the suit filed by the petitioner challenging the relinquishment deed dated 09.05.2014, the respondents came out with the plea that there was no agreement to sell. Keeping in view the said fact, the petitioner-plaintiff should have been vigilant enough to avail appropriate remedy qua the alleged agreement to sell dated 19.02.2014 within the prescribed time limit, which started running from 15.02.2015, by which date, keeping in view the alleged agreement to sell dated 19.02.2014, the proceedings were to be completed.

Further, application seeking amendment of the said plaint so as to include the prayer for specific performance of the alleged agreement to sell dated 19.02.2014 in the suit which has been filed challenging the relinquishment deed in favour of defendants No. 2 to 4, the application for amendment was filed after a period of three years from the date cause of action accrued i.e. 19.02.2015.

That being so, the order passed by the Court below holding that the prayer sought to be included by way of amendment of suit is beyond limitation prescribed for the said prayer to be entertained, cannot be faulted with.

Further, by the amendment sought, the nature of the suit will change and the same is impermissible. Only the amendment which is just and proper for adjudication the prayer of the suit as raised initially, can be allowed but the amendment which changes the nature of the suit itself is impermissible. In the present case, the initial suit filed by the petitioner-plaintiff was only to challenge the relinquishment dated 09.05.2014 whereas now, the said suit is sought to be changed to be suit with a prayer for specific performance of the alleged agreement to sell dated 19.02.2014, hence, the impugned order passed by the trial Court that the amendment sought will change the nature of the suit, cannot be faulted with or needs any intervention by this Court.

Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in ***SLP (C) No. 15272 of 2008 titled as Prithi Pal Singh and another vs. Amrik Singh and others, decided on 13.02.2013*** to submit the amendment of plaint can be allowed at the appellate stage also. There is no dispute with regard to the said proposition

but whether, the nature of the suit can be changed by the amendment of the suit or the prayer sought to be raised by way of amendment is barred by limitation is the principal question in the present petition whereas, the said question was not before the Hon'ble Supreme Court of India in ***Prithi Pal Singh's case (supra)***, hence the judgment being relied upon by the petitioner-plaintiff is not applicable in the facts and circumstances of the present case.

Keeping in view the above, no ground is made out for any interference by this Court in the impugned order dated 20.12.2022.

Dismissed.

March 29, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes