

2025:PHHC:070663



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

110

RSA-981-2019 (O&M)

Date of Decision : 23.05.2025

OM PARKASH

.... Appellant

VERSUS

SMT. KANTA AND ORS

.... Respondents

AND

110-A

RSA-2382-2019 (O&M)

OM PARKASH

.... Appellant

VERSUS

SMT. SHANTI AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajinder Goel, Advocate and
Mr. Harjyot Singh, Advocate
for the appellant in both the appeals.

Mr. Piyush Aggarwal, Advocate
for the respondents in both the appeals.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off the above noted two appeals being RSA-981-2019 titled as 'Om Parkash V/s Smt. Kanta & Ors.' filed against the subsequent purchaser, namely, Smt. Kanta and RSA-2382-2019 titled as 'Om Parkash V/s Smt. Shanti & Ors.' filed against the vendor, namely, Smt. Shanti. The parties are being hereinafter referred to as per their original status before the Trial Court for the sake of clarity.

2. The brief facts relevant to the present *lis* are that, initially, on 24.01.2001 the plaintiff filed a suit for permanent injunction for restraining the defendant, namely, Smt. Shanti, from alienating the suit property to any other person qua which an agreement to sell dated 18.12.2000 had been entered into between the parties. Smt. Shanti appeared and filed her written statement on 21.12.2001 denying the execution of the agreement to sell dated 18.12.2000 and receipt of the earnest money as alleged. After the framing of the issues, the parties led their respective evidence. Thereafter it came on the record that Smt. Shanti had already sold the suit land to defendants No.2 to 4 vide sale deed dated 24.04.2006 (Ex.D-8). On 28.11.2009 an application was filed by the plaintiff under Order VI Rule 17 CPC for amendment of the plaint seeking relief of declaration and specific performance. Defendants No.2 to 4, namely, Smt. Kanta, Smt. Salochna, and Smt. Shanti wife of Sh. Kaptan Singh, respectively, also filed an application under Order I Rule 10 CPC dated 29.03.2007 for being impleaded as parties. Both the said applications were allowed vide order dated 22.01.2010 and the following order was passed :

'Heard on the application under Order VI Rule 17 read with Section 151 CPC for amendment of the plaint and on application under Order I Rule 10 CPC. The counsel for the defendant has made no objection on the application for amendment of the plaint filed under Order VI Rule 17 CPC on the behalf of the plaintiff. Keeping in view the facts stated in the application and no

*objection made on behalf of the defendant, the application for amendment of plaint is allowed. Amended plaint is already on file. **This amendment shall operate from the date of the order.....***

3. Thereafter, the plaintiff filed an amended plaint seeking relief of specific performance and permanent injunction. The suit was decreed vide judgment and decree dated 15.03.2011. An appeal was preferred by the defendant which was allowed, and the suit was remanded back to the Trial Court vide judgment and decree dated 15.03.2014 on the point of limitation. The said judgment and decree was challenged by the plaintiff by filing two separate SAOs being SAO No.26-2014 and SAO No.27-2014 which were disposed off vide a common order dated 23.05.2018 holding as under :

'I am of the view that question of limitation is a legal question and can always be looked into while granting or refusing the claim of the plaintiff. Therefore, even in the absence of issue regarding limitation, the Court could record the findings whether the relief can be granted or it is time barred. Therefore, there is no need to frame the specific issue and order the rehearing of the matter by the trial Court.

As such, the impugned judgment dated 15.03.2014, passed by the learned District Judge, Jhajjar, framing issue of limitation and remanding the case to the trial Court, is set aside. The case is remanded to the Court of

learned District Judge, Jhajjar with a direction to hear the appeal on merits and decide the same within three months from the date of receipt of certified copy of this order.

Both the parties are directed to appear before the Court of learned District Judge, Jhajjar on 12.07.2018 at 10:00 A.M.

The present appeals stand allowed’.

4. The First Appellate Court vide judgment and decree dated 13.09.2018 allowed the appeal and dismissed the suit of the plaintiff. Aggrieved by the same two appeals being RSA-981-2019 titled as ‘Om Parkash V/s Smt. Kanta & Ors.’ has been preferred against the subsequent purchaser, namely, Smt. Kanta and RSA-2382-2019 titled as ‘Om Parkash V/s Smt. Shanti & Ors.’ has been preferred against the vendor, namely, Smt. Shanti.

5. The only argument raised by the learned counsel for the plaintiff qua the point of limitation is that since the application for amendment was allowed along with the application for impleadment, and on the no objection given by the learned counsel for the defendants, therefore, the limitation would commence from the date on which the said application was filed and the amendment would relate back to the date of filing of the suit.

6. *Per contra*, learned counsel for the defendants would contend that the plaintiff had filed a suit for permanent injunction on 24.01.2001. The

defendant, namely, Smt. Shanti, filed her written statement on 21.12.2001 denying the execution of the agreement to sell and therefore limitation would commence from 21.12.2001 and hence the suit was clearly barred by limitation. In support of his arguments, learned counsel for the defendants has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Tarlok Singh V/s Vijay Kumar Sabharwal [(1996) 8 SCC 367]**, **Atma Ram V/s Charanjit Singh [(2020) 3 SCC 311]**, **Vishwambhar & Ors. V/s Laxminarayana (dead) through LRs & Anr. [(2001) 6 SCC 163]** and **K. Raheja Constructions Ltd. & Anr. V/s Alliance Ministries & Ors. [1995 Supp (3) SCC 17]**.

7. Heard.

8. In the present case the only issue to be gone into is as to whether the suit for specific performance was barred by limitation. The suit for permanent injunction was filed on 24.01.2001 and the defendant-vendor filed her written statement on 21.12.2001 denying the execution of the agreement to sell and the receipt of the earnest money. Therefore, it was well within the knowledge of the plaintiff on 21.12.2001 that the vendor had denied the execution of the agreement to sell and limitation would hence commence from the said date. Admittedly, the application for amendment was filed on 28.11.2009. The argument of the learned counsel for the plaintiff that since no objection was given by the learned counsel for the defendants and hence point of limitation stands waived off cannot be accepted. Further, the argument of the learned counsel for the plaintiff that since there was no objection given by the learned counsel for the defendants,

the amendment would relate back to the date of filing of suit, which was well within the period of limitation, also cannot be accepted.

9. The Hon'ble Supreme Court in the case of **Tarlok Singh** (supra) has held as under :

'Shri Prem Malhotra, learned counsel for the respondent, contended that since the respondent had refused performance the suit must be deemed to have been filed on December 23, 1987 and, therefore, when the amendment was allowed, it would relate back to the date of filing the suit which was filed within three years from the date of the refusal. Accordingly, the suit is not barred by limitation. Shri U.R. Lalit, learned senior counsel for the appellant, contended that in view of the liberty given by the High Court the appellant is entitled to raise the plea of limitation. The suit filed after expiry of 3 years from 1986 is barred by limitation. The question is: as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit must be deemed to have been instituted on August

25, 1989 and the suit was clearly barred by limitation. We find force in the stand of the appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order VI, Rule 17 CPC on September 12, 1979. It will operate only on the application being ordered. Since the amendment was ordered on August 25, 1989 the crucial date would be the date on which the amendment was ordered by which date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit’.

Further, the Hon’ble Supreme Court in the case of **Atma Ram** (supra) has held as under :

‘7. As a matter of fact, if the suit was actually one for specific performance, the petitioner ought to have at least valued the suit on the basis of the sale consideration mentioned in the agreement. But he did not. If the suit was only for mandatory injunction (which it actually

was), the only recourse open to the petitioner was to seek an amendment under Order VI, Rule 17 CPC. If such an application had been filed, it would have either been dismissed on the ground of limitation (K. Raheja Constructions Ltd., vs. Alliance Ministries 1995 Suppl. (3) SCC 17) or even if allowed, the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the plaint (Tarlok Singh vs. Vijay Kumar 1996 (8) SCC 367, Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit vs. Ramesh Chander 2010 (14) SCC 596). Therefore, a short cut was found by the petitioner/plaintiff to retain the plaint as such, but to seek permission to pay deficit court fee, as though what was filed in the first instance was actually a suit for specific performance. Such a dubious approach should not be allowed especially in a suit for specific performance, as the relief of specific performance is discretionary under Section 20 of the Specific Relief Act, 1963’.

In K. Raheja Constructions (supra) it was held as under :

‘It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will

always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years elapsed from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accrued to the respondent’.

10. Merely because the amendment was allowed, it cannot be held that the issue of limitation stands waived off. As noticed above, in the case of **Atma Ram** (supra), their Lordship while dealing with a similar situation had held that the prayer for specific performance, inserted by way of amendment, would not have been, as a matter of course, taken as relating back to the date of the filing off plaint.

11. In view of the law laid down by the Hon’ble Supreme Court, as noticed above, I do not find any merit in both the present appeals, the same are accordingly dismissed. No question of law, much less any substantial question of law, arises for determination in the present case. Pending applications, if any, also stand disposed off.

23.05.2025

Aman Jain

NOTE:

(ALKA SARIN)

JUDGE

Whether speaking/non-speaking: Speaking

Whether reportable: Yes/No