



109 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3-2018 (O&M)

Date of Decision: April 30, 2025

Ram Kumar (Deceased) through LRs

. . . . Appellant

Vs.

Sh. Yad Ram and another

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajinder Goel and
Mr. Manoj Sharma, Advocates for the appellant.

DEEPAK GUPTA, J.

CM-6-C-2018

This is an application under Section 5 of the Limitation Act to condone the delay of 36 days in filing the appeal.

Heard.

For the reasons as mentioned in the application, supported by an affidavit of one of the LRs of the appellant, the delay of 36 days in filing the appeal is hereby condoned.

The application stands disposed of.

RSA-3-2018

Suit for possession by way of pre-emption of the suit land filed by plaintiff – Ram Kumar (*Appellant herein through his LRs*) was dismissed by the trial Court of Ld. Civil Judge (Sr. Divn.), Yamunanagar vide judgment dated 06.03.2013. The appeal filed by the said plaintiff was dismissed by the Appellate Court of learned Addl. District Judge, Yamunanagar on 08.03.2017. Against these concurrent findings, present regular second appeal has been filed.

2. Plaintiff sought to pre-empt the sale deed dated 13.01.2006 in respect of land comprised in khasra No.404, as per details given in the plaint, situated in revenue estate of village Radaur, Tehsil Jagadhri, District Yamunanagar. Yad Ram – the vendor was impleaded as defendant No.1 (*respondent N: 1 herein*); whereas one Balak Ram was impleaded as defendant No.2 and it was alleged that suit land had been sold by vendor – Yad Ram to Balak Ram. Pre-emption was sought by the plaintiff on the ground that he was a tenant on the suit land.

3. The two initially impleaded defendants, i.e. Yad Ram and Balak Ram contested the suit, contending that defendant No.2 had not purchased the suit land comprised in khasra No.404; and rather, he had purchased khasra No.414 from Yad Ram.

4. Necessary issues were framed. The case was at the stage of plaintiff's evidence, when application under Order VI Rule 17 CPC read with Order I Rule 10 CPC was moved by the plaintiff so as to replace Smt. Anupama as defendant No.2 in place of Balak Ram, by submitting that khasra No.404, i.e. suit property in question had been sold by Yad Ram to said Smt. Anupama. On the no objection endorsed by the counsel for the initially impleaded defendants, the application was allowed on 23.01.2018. The amended title was filed on 17.04.2018. Smt. Anupama, i.e. newly impleaded defendant No.2 (*now respondent No.2*) put in appearance on 26.09.2008 and contested the suit. One of the ground to contest the suit was that it was barred by limitation.

5. Both the Courts below found the suit to be barred by limitation and as such, dismissed the same.

6. Assailing the findings, it is contended by learned counsel for the plaintiff – appellant that the impugned sale deed was executed by defendant – Yad Ram in favour of Smt. Anupama on 13.01.2006; that suit was filed on 12.01.2007; that though the amendment in the plaint & to Implead Smt. Anupama as a party was allowed on 23.01.2008, but the said amendment will

relate back to the date of filing of the suit, i.e. 12.01.2007 and therefore, the Courts below have wrongly held the suit to be time barred.

7. This Court does not find merit in the abovesaid contention. The period of one year is prescribed under Article 97 of the Limitation Act to file a suit for pre-emption. Smt. Anupama, i.e. vendee of the sale deed in respect of suit land comprising khasra No.404 has been permitted to be impleaded as party to the suit as per order dated 23.01.2008 and after filing of the amended title on 17.04.2008, she put in appearance on 26.09.2008.

8. As per Order I Rule 10 (4) CPC, where a defendant is added, the plaint shall, unless Court otherwise directs, is to be amended in such manner, as may be necessary and the copy of amended plaint alongwith summons are to be served upon new defendant and if the Court thinks fit on the original defendant. Order 1 Rule 10 (5) CPC further provides that subject to the provisions of Limitation Act, the proceedings as against any such person added as defendant shall be deemed to have begun only on the service of summons.

8. Not only above Section 21 of the Limitation Act provides about the effect of substituting or adding a new plaintiff or defendant. As per this provision, where after institution of the suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him be deemed to have been instituted, when he was so made a party, though, proviso to this Section gives discretion to the Court that in case Court is satisfied that omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

9. It is thus clear that though as a general rule, when a new plaintiff or defendant is added to or substituted in a suit after its initial institution, the law presumes that the suit, in relation to that new party, is deemed to have been instituted on the date they were actually made a party—not the original filing date of the suit. It is for the reason that limitation periods are strict in civil law. If a party is added later, and the limitation period for claims against

or by that party has already expired, then the suit may become barred by limitation in respect of them. The Proviso to Section 21 of Limitation Act gives judicial discretion in cases of mistake made in good faith. In any such situation, if the court is satisfied that the omission to include the plaintiff or defendant was due to a mistake made in good faith, then the court may direct that, for the purposes of limitation, the suit shall be deemed to have been instituted on an earlier date, even prior to when the party was formally added. However, the “Mistake made in good faith” must be genuine, reasonable, and not negligent. Courts are required to evaluate this based on facts and surrounding circumstances.

10. In present case, it is contended by learned counsel that the sale deeds in favour of Balak Ram as well as Smt. Anupama were executed on the same date and it is due to the bonafide mistake that vendee of sale deed in respect of khasra No.414 was initially impleaded as defendant; instead of vendee of suit land, i.e. khasra No.404, who was Smt. Anupama.

11. There is no merit in the said contention. After noting the legal position, the First Appellate Court has rightly held that in the present case, the suit against defendant No.2 – Smt. Anupama, who was impleaded in place of initially impleaded defendant – Balak Ram shall be deemed to have been instituted only from her service and that said date cannot relate back to the institution of the suit. The Appellate Court has rightly relied upon **“Ramalingam Chettiar v. P.K. Pattabiraman & another” 2001(2) CCC 347**, wherein it was held by Hon’ble Supreme Court as under:-

“6. Learned counsel for the respondent referred to proviso to Section 21 of the Limitation Act and on the strength thereof argued that even if the application for impleadment of State of Tamil Nadu was allowed on 11.6.1979, the said order has to be understood as if impleadment of defendant No. 2 was with effect from the date of filing the suit. There is no substance in the argument. Section 21 of the Limitation Act contemplates two situations - One under the substantive provision, which provides that where after filing of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been brought on

the day when he was added or substituted as a party in the suit. The second situation contemplated under the proviso to the substantive provision is where the court is satisfied that a new plaintiff or defendant was omitted to be added or substituted due to a mistake in good faith, the court may direct that the suit, as regards the newly added or substituted party, shall be deemed to have been instituted on any earlier date. Thus, under the proviso, if the court is satisfied, it can direct that the suit as regards newly added or substituted plaintiff or defendant shall be deemed to have been instituted on an earlier date. In such a case, the court after substituting or adding a party in the suit is required to pass a separate/further order that the suit as regards the newly added defendant or plaintiff shall be deemed to have been instituted with effect from the date the suit was laid. Merely adding or substituting a plaintiff or defendant by the court is not enough. In the absence of any order that the impleadment of newly added or substituted party shall take effect from the date of institution of a suit, the period of limitation so far as the newly added or substituted shall run from the date of their impleadment in the suit.

[Underlined portion emphasised by this court]

12. It is thus clear that for the benefit of the proviso to Section 21 of the Limitation Act to apply, the court must explicitly pass a separate order directing such retrospective effect. Without such an order, limitation continues to run from the date the new party is actually impleaded.

13. In the present case, as observed by the Appellate Court that no order has been passed by the trial Court that impleadment of Smt. Anupama – defendant No.2 would take effect from the date of institution of the suit, so as to give any advantage to the plaintiff of the proviso to Section 21 of the Limitation Act.

14. In view of the aforesaid facts and circumstances, the Courts below did not commit any error in coming to the conclusion that suit filed by the plaintiff against defendant No.2 – Smt. Anupama, i.e. vendee of the suit land was beyond limitation. As such, the suit for pre-emption has been rightly dismissed being time barred.

15. This Court does not find any illegality or perversity in the concurrent findings of facts as recorded by the Courts below, which are found to be based upon proper appreciation of evidence on record and the legal position. Finding the present appeal to be devoid of any merit, the same is hereby dismissed.

April 30, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No