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

**RSA-1099-2014(O&M)
Date of decision:-05.03.2025**

Surinder Singh and others

...Appellants

Versus

Harjinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Naresh Kaushik, Advocate
for the appellants.

Mr. G.S. Punia, Senior Advocate with
Mr. Prabhsher Singh Walia, Advocate
for respondents No.1 to 3.

None for respondent No.4 and 5.

SUVIR SEHGAL, J.(ORAL)

1. Appellants/plaintiffs No.1 to 3 are in second appeal before this Court challenging judgment and decree dated 16.01.2014 passed by the first appellate Court.

2. Factual matrix leading to the filing of the appeal is that plaintiffs filed a suit in representative capacity along with an application under Order 1 Rule 8 CPC pleading that a community centre was built on the suit property with Government aid and public funds. The building was being used for the common welfare of the respondents of the village, but during the pendency of the suit, defendants have demolished the building and have threatened to raise a new building as a part of Gurudwara Sahib adjoining the suit land. An application was moved



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before the SDM and when a BDPO instructed to enquire, defendants attacked plaintiff No.2 and inflicted injuries on him. Matter was reported to the SHO vide letter dated 06.07.2004 for registration of a criminal case against respondents No.2 to 4. As the illegal construction has been completed, suit was filed for its demolition and for possession of the suit property. Notice of the suit was issued to the defendants, who filed a written statement taking various preliminary objections. On merits, it was denied that any community centre ever existing on the site and a stand was taken that yellow coloured portion in the site plan is the main hall of the Gurudwara Sahib. It was pleaded that a Langer Hall has been re-built by spending approximately Rs.5 lakhs for the facility of the village residents and the Gram Panchayat has no concern with it. Demolition of the community centre was specifically declined. Trial Court framed issues on the basis of pleadings of the parties and the parties lead evidence in support of their respective case. After contest, Trial Court by judgment dated 28.05.2009 decreed the suit. An appeal was preferred by defendants. First appellate Court framed an additional issue and called for a report. By order 09.10.2012, Trial Court returned the finding that the suit is barred by limitation and decided the additional issue against the plaintiffs. After re-appreciating the evidence adduced by the parties and hearing the counsel, the first appellate Court by judgment dated 16.01.2014 accepted the appeal and dismissed the suit. Plaintiffs have filed the instant second appeal in the above background.

3. I have heard counsel for the parties and considered their respective submissions besides examining the requisitioned record with



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their able assistance.

4. Additional Issue No.6-A framed by the first appellate Court is to the following effect:

“Whether the suit filed by the plaintiffs for mandatory injunction is within limitation”? OPP.

5. Additional Issue No.6-A goes to the core of the dispute between the parties. Plaintiffs instituted a suit for decree of mandatory injunction on 16.7.2004 alleging that defendants have demolished the community centre on 20.06.2004. An application for amendment of the plaint was moved on 22.10.2007, which was declined by the Trial Court and revision petition filed by the plaintiffs was accepted by the High Court by order dated 21.07.2008. Amendment in the plaint was permitted to be incorporated with liberty to the defendants to raise an objection regarding the plea of limitation. It is evident that cause of action arose to the plaintiffs on 20.06.2004. However, an application for amendment was filed by the them on 22.10.2007, which was clearly beyond the limitation period of three years prescribed under Article 113 of the Limitation Act, 1963. The argument of counsel for the appellants that the amendment in the plaint would relate back to the filing of the suit cannot be accepted. Hon’ble Supreme Court in ***Tarlok Singh Versus Vijay Kumar Sabharwal, (1996) 8 SCC 367*** has held that where the suit was initially filed for perpetual injunction but later on by virtue of an amendment, it was converted into a suit for specific performance of an agreement to sell, the crucial date of determining limitation would be the date when the amendment was allowed. In ***Mohd. Ilyas Versus***



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Mohd. Adil 1994 (2) RRR 333, a Division Bench of the High Court of Delhi held that the cause of action will accrue from the time when the right of sue accrues.

6. Adverting to the facts of the present case, it is evident that cause of action accrued to the plaintiffs on 20.06.2004 when the community centre is alleged to have been demolished by the defendants. Although an application was filed by the plaintiffs for amendment of the plaint in October, 2007, but it was accepted by the High Court on 21.07.2008. Therefore, the suit for mandatory injunction shall be deemed to have been instituted on the date when the amendment was permitted to be incorporated. Limitation for filing a suit is three years from the date accrual of cause of action. The suit is, therefore, clearly barred by time.

7. As the legal position has been correctly appreciated by the first appellate Court, no interference is called for in the instant second appeal. The findings recorded by the first appellant Court are affirmed.

8. Appeal is devoid of merit and is dismissed with no order as to costs.

9. Pending application, if any, is also disposed off.

(SUVIR SEHGAL)
JUDGE

05.03.2025
Brij

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