

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7156 OF 2013
(Arising out of SLP(C) No.4319/2012)

VINAY KUMAR THROUGH ITS POWER OF
ATTORNEY HOLDER

Appellant(s)

:VERSUS:

GURDEEP SINGH & ORS.

Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. Patwalia, learned senior counsel in support of this appeal and Mr. Sanchit Guru, learned counsel appearing for respondent No.1.

3. This appeal seeks to challenge the order dated 1.11.2011 passed by the learned Single Judge of the Punjab and Haryana High Court in Civil Revision No.6618 of 2011, declining to interfere with the order dated 20.9.2011 passed by the

Additional Civil Judge, Senior Division, Samrala. The appellant filed a suit for specific performance of an agreement to sale. In the plaint, as it has been filed, the date of the agreement has been mentioned as 17.1.2004. It is the case of the plaintiff-appellant that the year has been erroneously mentioned in the agreement and, in fact, it is an agreement dated 17.1.2005.

4. The plaintiff-appellant moved an application initially to amend the plaint, and in that he sought appropriate correction of the plaint as to the date of agreement from 17.1.2004 to 17.1.2005. That application was rejected. The appellant did not choose to challenge that order but he moved another application on 1.12.2009 wherein he prayed that an additional declaration be granted. The addition which was sought to be made was as follows:

"8. That the applicant/plaintiff now wants to make the amendment in the plaint as under:-

i) That the plaintiff wants to add in the heading and in the prayer clause of the plaint the following relief of declaration:-

'And suit for declaration to the effect that the date of agreement to sell is

17-1-2005 instead of 17-1-2004 which is liable to be rectified as the mistake occurred due to typographic error and not intentional.'

ii) That the plaintiff also wants to write/correct the date as 17-1-2005 instead of 17-1-2004 in the headnote, body and the prayer clause of the plaint."

5. That application was rejected by the learned Additional Civil Judge taking the view that since one amendment application was already rejected, the second one could not lie. It is this order of the Additional Civil Judge which was challenged before the learned Single Judge of the High Court. The learned Single Judge has left that order undisturbed. Being aggrieved by the order passed by the learned Single Judge of the High Court, the present appeal has come before us.

6. Mr. Patwalia, learned senior counsel appearing for the appellant submits that the prayers in the two applications for amendment were different. The earlier one sought to amend the plaint and though it has been rejected, the amendment now sought was with a view to point out

that the date of agreement was wrongly mentioned in the suit document. He submits that the learned Judge ignored the fact that the two amendments were different and therefore, it could not be said that the plaintiff-appellant was trying to espouse the same cause once again.

7. Mr. Sanchit Guru, learned counsel appearing for the respondents on the other hand, submits that since the plaintiff-appellant had made the same prayer once again, this should not be permitted. Such an application should be held to be barred by the doctrine of res judicata. Apart from that, he submits that the new prayer would be beyond the period of limitation and therefore on that ground also it could not be permitted.

8. We have noted the submissions of both the counsel. We are clearly of the view that the amendment which was sought on the second occasion, was different from the earlier one. The application which sought to make the amendment to the plaint on 1.12.2009, was with a view to seek a declaration regarding the correct date in the suit document.

That was not the prayer in the application filed earlier. That being so, the second application could not be said to be hit by the doctrine of res judicata. Therefore, in our view, the amendment requires to be allowed. This is because the main submission of the appellant-plaintiff was that the document was executed on 17.1.2005. It is also the case of the appellant that in pursuance thereto, some substantial payment has been made. This is denied by the respondent-defendant. That being the position, this issue will have to go to trial. However, it will be open to the respondents to raise the issue of limitation. As far as the plea of limitation is concerned, we do not express any opinion thereon. The issue as to whether the declaration as sought now should ultimately be granted or not, will also be decided at the end of the trial.

9. In view of what is stated above, this appeal is allowed, the order dated 1.11.2011 passed by the learned Single Judge of the High Court as well as that of the Additional Civil Judge, Senior Division, dated 20.9.2011 are set aside. The amendment

application moved by the plaintiff-appellant on 1.12.2009 is allowed. The plaintiff-appellant will carry out the necessary amendment within two weeks and the respondents may file written statement within four weeks thereafter. It will be open to the plaintiff-appellant to lead evidence on the amended plaint. As stated earlier, it will be open to the respondents to raise both the pleas as to whether the prayer now permitted, should at all be granted and as far as this prayer is concerned whether it would be beyond limitation.

10. The appeal is accordingly allowed without any order as to costs. All the I.As. are disposed of.

JUDGMENT

.....J
(H.L. GOKHALE)

.....J
(J. CHELAMESWAR)

New Delhi;
August 22, 2013.