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K. RAHEJA CONSTRUCTIONS LTD. AND ANR.

v.

ALLIANCE MINISTRIES AND ORS.

MAY 1, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908 :

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Order 6 Rule 17—Amendment of plaint—Condition precedent—Fulfillment of—Not asking for the relief of specific performance in the original suit—Amendment application filed after limitation period—Held : Barred by limitation.

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The petitioners filed a suit for permanent injunction restraining the respondents from alienating, encumbering, selling, disposing of, or in any way dealing with the suit property. Subsequently they filed an application seeking to amend the plaint for the grant of the relief of specific performance. In support of the amendment application it was averred that subsequently they discovered that the Charity Commissioner had granted permission for sale of the Trust Property and therefore, they were entitled to the decree of specific performance. They also relied on certain letters wherein the petitioner themselves had expressly stated that there was a concluded contract of sale between the petitioners and the respondents and that they were ready and willing to perform their part of the contract paying the balance consideration in terms of the terms and conditions of the said letters, but in their reply the respondents rejected the order of the petitioners. The amendment application was dismissed by the trial Court as also by the High Court.

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In the Special Leave Petition, it was contended that the relief was really founded upon the facts set out in the plaint and it was the subsequent knowledge about permission granted by the Charity Commissioner for alienation, which required the amendment and the petitioners were not precluded from filing an application for amendment or the plaint.

Dismissing the Special Leave Petition, this Court

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HELD : 1.1. The application for amendment was barred by limita-

tion. [963-E]

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1.2. 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 year to elapse 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. [962-H, 963-A, B]

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A.K. Gupta v. D.V.C., [1966] 1 SCR 796, distinguished.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 9397 of 1995.

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From the Judgment and Order dated 21.2.95 of the Madras High Court in C.R.P.No. 510 of 1995.

N.S. Hegde, P.P. Singh and G.V. Chandrasekhar for the Petitioners.

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A.T.M. Sampath for the Respondents.

The following Order of the Court was delivered :

The petitioners admittedly filed O.S.No. 213/93 (subsequently numbered as O.S. 251/87) for relief of permanent injunction restraining the respondents from alienating, encumbering, selling, disposing of, or in any way dealing with the said property, more particularly described in Schedule 'A' to the plaint or any portion thereof. In paragraph 13 of the plaint it was stated thus :

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"The said defendants after a lapse of a month, through a letter dated 29th April, 1987 sent by defendant No. 4 to plaintiff No. 1 blandly intimated that the offers of plaintiff No. 1 were not being accepted by the trustees of defendant No. 1, a copy of the 4th defendant's said letter dated 29th April, 1987 is annexed hereto and marked as document No. 4. By his letter dated 4th May, 1987

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A addressed to defendant No. 4, the plaintiff No. 1 set out the correct position and reiterated that a definite and concluded contract for sale of the said property in favour of plaintiff No. 1 had been confirmed by the said defendants to allege that the offers had not been accepted. The 1st plaintiff by their said letter also reiterated their readiness and willingness to perform their part of the contract and pay the balance purchase price in accordance with the terms and conditions agreed upon. A copy of the said letter dated 4th May, 1987 is annexed hereto and marked as document No. 5"

C Pursuant to the letter dated April 29, 1987 addressed by the plaintiff, the defendants in their reply dated 4.5.87 rejected the offer of the petitioners. Therein the petitioners themselves have expressly set out that there is a concluded contract of sale between the petitioners and the respondents and that they are ready and willing to perform their part of the contract paying the balance consideration in the terms and conditions of the said letters. In paragraph 28 of the plaint, April 29, 1987 is one of the dates set out to give them cause of action. On November 25, 1994 application under Order 6 Rule 17 was filed in I.A. 745/94 seeking to amend the plaint for the grant of the relief of specific performance. The averments made in support thereof is that they subsequently, discovered that the Charity Commissioner had granted permission for the sale of the Trust Property and, therefore, the petitioners are entitled to the decree of specific performance. That application was dismissed by the trial Court on January 20, 1995 and by the High Court on February 21, 1995 in CRP No. 510/95. Thus, this petition for leave.

F Shri Santosh Hegde, learned senior counsel for the petitioners, has contended that the petitioners have not come forward with any new plea. They have set out all the material allegations and their claims in the plaint. What they are seeking for is only a formal relief which, though not originally asked for, the omission does not preclude the petitioners to file the application under Order 6 Rule 17 seeking for the amendment of the plaint. The relief is really founded upon the facts set out in the plaint and it is the subsequent knowledge about permission granted by the Charity Commissioner for alienation, which required the amendment. We find that the contention is not tenable.

H It is seen that the permission for alienation is not a condition prece-

dent to file the suit for specific performance. The decree of specific performance will always be subject to the condition 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.

Shri Hegde placed strong reliance on the judgment of this Court in *A.K. Gupta v. D.V.C.*, reported in [1966] 1 SCR 796. In that case, the petitioners had expressly reserved the right to claim the amount of Rs. 65,000 in the original plaint, valuing it accordingly. Since, the relief of injunction was confined to a limited point, subsequently, he filed an application for the alternative relief of recovery of the amount of Rs. 65,000. In that view, this Court held that since the petitioners have already reserved the right in the plaint, the relief of injunction, as originally prayed for, did not preclude the appellant to file the application under Order 6 Rule 17 to claim the relief for the amount which he originally sought for. The ratio therein has no application to the facts in this case.

On the facts, we hold that the application for amendment was barred by limitation. The petition is, accordingly, dismissed.

G.N.

Petition dismissed.