

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

OWP No.461/2012

Date of decision: **12.05.2014**

Khazir Ganai

Vs.

Mohammad Rafiq Ganai & ors

Coram:-

***Hon'ble Mr. Justice Mohammad Yaqoob
Mir, Judge***

Appearing counsel:-

For the Petitioner(s): Mr. M. A. Qayoom

For the Respondent(s): Mr. A. H. Naik, Sr. Adv. with
Mr.

Athar.

- | | | |
|-----|--|---------------------|
| i) | Whether to be reported
in Digest/Journal: | YES/NO |
| ii) | Whether to be reported
in Press/Media: | YES/OPTIONAL |

1. Vide order dated 04.04.2012, passed by the Court of Sub Judge(Chief Judicial Magistrate), Sopore, application filed by the petitioner (hereinafter referred to as the plaintiff) for placing on record the sale deed executed on 20.06.2006 and registered on 21.07.2006, has been rejected. Having no other remedy of revision or appeal, instant petition has been filed seeking quashment of the said order.

2. Plaintiff has purchased 10 marlas of land covered by survey No.10 situated at Dangerpora from one Mohammad Rafiq Ganai S/O Mohammad Sultan Ganai-respondent No.1 (defendant), pursuant to agreement to sell, as such, has been in possession of the same. When his possession over the land was attempted to be interfered with by the respondents(hereinafter referred to as the defendants), he filed a suit for

declaration so as to declare him as owner of the land, furthermore to permanently restrain the defendants from causing interference.

3. The suit has been instituted on 14.11.1998. The listed witnesses of the plaintiff were being summoned. In the meanwhile, on 16th March, 2009, an application has been filed for taking on record document i.e. sale deed which has been executed on 20.06.2006 in pursuance to the terms of agreement to sell. The said application has been resisted by the defendants on the ground that the document of sale deed has been executed during the pendency of the suit. The plaintiff had failed to produce the document as was permissible in terms of Order XIII Rule 2 of CPC. The document could be produced at later stage but for that there shall be some valid legal reason which is not forthcoming from the text of the application.

4. Order XIII Rule 2 of the Code of Civil Procedure is not applicable at all because at the stage of production of documents, the sale deed was not in existence as it had been executed in the year 2006, so a development during the pendency of the suit. No restrain order was in force so as to prohibit execution

of the sale deed in pursuance to the terms and conditions of the agreement to sell.

5. Now the question which arose for consideration is as to whether the document of sale deed could be placed on record or the proper course for the plaintiff was to amend his suit in view of the development of execution of sale deed during the pendency of the suit. Trial court has opined that no legal reason has been put forth in support of the application. Furthermore, after a gap of two and half years from the date of execution of sale deed application has been filed for placing it on record. No reason has been assigned for delay in filing the said application. It has also been opined that the execution of the sale deed is a subsequent event which can to be taken care of by amending the pleadings under Order XVII CPC (which in fact is Order VI Rule 17).

6. When learned counsel for the plaintiff was pointedly confronted with the position i.e. the suit is based on agreement to sell, on execution of sale deed, the plaint requires amendment in view of the said development during pendency of the suit, he would submit that the rejection of the application for taking

on record the sale deed may not stand as an impediment.

7. It is to be made clear that in terms of Order VI Rule 17 of the Code of Civil Procedure, amendment of pleadings at any stage is permissible as shall be necessary for the purposes of determining the real questions in controversy between the parties. Filing of application for placing on record the sale deed otherwise would necessitate the amendment in the pleadings. Trial court has rightly observed that the subsequent development even can be taken care of by amending the pleadings. It may be quite appropriate for the plaintiff to file an application for amendment, if he so chooses, which application has to be decided by the trial court in accordance with law. Same will help effectual adjudication of the real questions in controversy between the parties and will also help in avoiding multiplicity of litigation.

8. The order impugned dated 04.04.2012 declining to take on record the sale deed, for the afore-stated reasons, does not call for any interference. However, said order of the trial court shall not stand as an impediment in deciding the application for amendment, if filed, on its own merits.

9. The suit has been pending from the year 1998, till date plaintiff is leading the evidence. There has been considerable delay in disposal of the suit. It is impressed upon the trial court to ensure expeditious disposal of the case by scheduling the case fortnightly.

10. Disposed of as above along with connected CMP.

11. Trial court record along with copy of this order be sent back, where the parties shall appear on 23.05.2014.

(Mohammad Yaqoob Mir)
Judge

Srinagar
12.05.2014
"Mohammad Altaf"

Pronounced today on 12.05.2014 in terms of Rule 138(3) of the J&K High Court Rules 1999.

(Bansi Lal Bhat)
Judge

Srinagar
12.05.2014