

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

Civil Revision No.1248 of 2015 (O&M)

Date of decision: 08.12.2015

Gurpreet Singh and another

.....Petitioners

Versus

Bhajan Kaur and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vijay Lath, Advocate,
for the petitioners.

Mr. F.S. Virk, Advocate,
for the respondents.

Ritu Bahri, J.

CM No.25377-CII of 2015

In view of the averments mentioned in the application, same is allowed and copies of judgment and decree dated 10.09.2015 (Annexure R-1) are taken on record.

CR No.1248 of 2015

Challenge in this petition is to the order dated 22.01.2015 passed by the Civil Judge (Junior Division), Amloh, whereby application filed by defendant Nos. 1 and 2-petitioners under Order 6 Rule 17 CPC for amendment of written statement has been dismissed.

The petitioners had filed two separate written statements, copies of which, are annexed as Annexures P-2 and P-3. In first paragraph of preliminary objections, it was stated as under:-

“1. That plaintiff is in physical possession of the property in suit. As such present suit is not maintainable.

Xx

xx

xx”

The above written statements were filed in the year 2008. On

merits, in para Nos.11 and 12, it was specifically stated that defendant No.2-Neelam Kumari had sold the property and possession thereof was given by her to defendant No.1 after execution of the sale deed. The correction was being sought in para No.1 of the preliminary objections of written statement on the ground that there was typographical mistake as word “not” could not be typed due to inadvertence. Actually, the defendants-petitioners wanted to take preliminary objection by stating that “the plaintiff was not in physical possession of the property in suit and hence, the suit was not maintainable.”

This application for amendment has been dismissed on the ground that after filing of the written statement in the year 2008, no application has been filed for almost six years and there was no explanation as to why such amendment could not be sought before commencement of trial i.e. after framing of issues and recording of evidence of the plaintiff-respondents. While dismissing the application, reference has been made to the judgments passed by the Allahabad High Court in Anwar & others Vs. District Judge, Ghazipur & others, 2010 (1) Civil Court Cases 159 and this Court in Ajit Singh Vs. Jaswinder Kaur, 2009 (1) Civil Court Cases 354, wherein application for amendment of the written statement was not allowed as the proceedings in the trial had commenced.

After going through para Nos. 11 and 12 of the written statements (Annexures P-2 and P-3), it cannot be disputed that defendants-petitioners had specifically taken a plea that possession of the suit property had been given to defendant No.1 by defendant No.2 after execution of the sale deed in his favour. However, in preliminary objections, word “not” was left to be typed due to inadvertence.

Learned counsel for the respondents, at the same time, has placed

1), whereby suit filed by the plaintiffs-respondents for permanent injunction restraining defendant-Gurpreet Singh from causing any interference in their possession over the land, which is subject matter of the present dispute and the sale deed dated 08.02.2008, has since been decreed. However, a perusal of judgment (Annexure R-1) shows that only injunction has been granted by restraining defendant-Gurpreet Singh from interfering in the possession of the plaintiffs (respondents in the present case).

While dismissing the application for amendment of written statement, trial Court made an observation that the defendants (petitioners) cannot be allowed to withdraw from the admission made by them in the earlier written statement. However, this Court is of the view that in para Nos. 11 and 12 of the written statement, the defendants (petitioners) have specifically stated that they were in possession over the suit land. The amendment which is now being sought is only with regard to a typographical error, which should have been allowed by the trial Court.

In view of the above, the impugned order dated 22.01.2015 is set aside and defendant-petitioners are permitted to amend their written statement as prayed for, subject to costs of Rs.5000/- to be paid to the plaintiffs-respondents. However, keeping in view that during the pendency of this suit, another suit filed by the plaintiffs for permanent injunction has been decreed, the plaintiffs will be at liberty to file a fresh affidavit in their evidence and thereafter, the trial Court shall proceed with the case.

Allowed accordingly.

08.12.2015
ajp

(RITU BAHRI)
JUDGE