

107

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

CR No.3191 of 2015

Date of decision: May 13, 2015

Ravinder Kaur @ Rama Devi

.....Petitioner

Versus

Tara Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jasbir Singh, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the order dated 11.02.2015, whereby application moved by the petitioner under Order 6 Rule 17 of Code of Civil Procedure, 1908 ('CPC' for short) for amendment of the plaint, was dismissed.

Order 6 Rule 17 CPC reads as under:

“17. Amendment of pleadings - *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, as per above provision, parties can be permitted to amend their pleadings before the commencement

of the trial. However, no application for amendment of pleadings shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, parties could not have raised the matter before the commencement of the trial.

Learned counsel for the petitioner has submitted that the law qua amendment of pleadings was very liberal. Petitioner had been dispossessed from the property in dispute during the pendency of the suit and was, thus entitled to seek the relief of possession by way of amendment of the plaint. Learned counsel has further submitted that in case, petitioner is not permitted to amend the plaint, the suit would be rendered infructuous and the purpose of filing the suit would be defeated.

Petitioner has filed suit for declaration that the petitioner was co-owner in possession of the suit property. During the pendency of the suit, petitioner moved an application under Order 6 Rule 17 CPC for permission to amend the plaint. By way of the amendment, petitioner wants to incorporate the relief of possession. The case of the petitioner is that the defendants had taken forcible possession of the suit property from the petitioner during the pendency of the suit. The learned trial Court while dismissing the application has held that the application moved by the petitioner for amendment of the plaint was

vague. Petitioner had failed to specify any date, month or year when the defendants had taken forcible possession of the said property. On the other hand, the case of the defendants was that they were in possession of the suit land as owners on the basis of unregistered will executed by Bhagat Ram in their favour. Plaintiff while appearing in the witness-box as PW1 admitted in her cross-examination that the defendant Nos.1 and 2 were in possession of the suit property left by Bhagat Ram. Plaintiff had not asserted that the defendants had taken forcible possession of the suit property during the pendency of the suit. In these circumstances, the reasons given by the trial Court while dismissing the application moved by the petitioner for amendment of the plaint, are sound reasons and calls for no interference.

Dismissed.

**(SABINA)
JUDGE**

May 13, 2015

m.singh