

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

CR No.4735 of 2013

Date of Decision:10.12.2015

Bhalinder Singh

.....Petitioner

Vs.

Gurdeep Kaur and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present:- Mr. Abhinav Oberoi, Advocate for the petitioner.

Mr. Harmanpreet Singh Cheema, Advocate for
respondents No.1 to 3.

K. KANNAN, J.(Oral)

The plaintiff, who, after closing his evidence in a suit for injunction, sought an amendment for recovery of possession. This was contested by the defendant pointing out to the fact that the suit had been filed in the year 2005, evidence closed in the year 2008 and application for amendment filed in the year 2012. In the scheme of change of law under Order 6 Rule 17, the amendment shall be restricted only to events which in spite of due diligence, the plaintiff could not have known. The amendment was sought on the plea that the defendant taking possession of the property pending suit where it must be taken as a subsequent event to suit and rule will stand relaxed. No serious prejudice could be caused for the amendment itself shall not decide whether the plaintiff's case is true or not. If the plaintiff establishes his right to the property, recovery of possession instead of relief of injunction, will be the only proper remedy if the defendant is admittedly in possession. The amendment ought to have been allowed.

For the sheer indiscretion of the plaintiff in allowing for the trial to proceed far beyond the time when the plaintiff is complaining that the defendant had taken possession of the property, I impose costs of Rs.15,000/- as payable by the plaintiff to the defendant. Since recovery of possession is sought, the plaintiff shall affix the Court fee payable under Section 7(v) of the Court Fees Act and apply the necessary valuation in the manner that the property is to be valued and ad-voleram court fee shall be collected thereon. Even while disallowing the plea of the petitioner that the amendment could not have been allowed, I make the modification of the order only to the extent of incorporating a direction that the necessary court fee shall be calculated and paid within a period of four weeks from the date of receipt of copy of the order. No decree shall be drafted unless adequate court fee is paid as required under the Court Fees Act.

Revision petition is disposed of with above directions.

December 10, 2015
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(K.KANNAN)
JUDGE