

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

**CR No.4871 of 2015
Date of decision: 15.10.2015**

Bachan Singh

... Petitioner

Vs.

Dilbagh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Kunal Dawar, Advocate, for the petitioner.

Mr. S.S.Dinarpur, Advocate, for respondents No.1 to 3.

AMIT RAWAL J. (Oral)

Challenge in the present revision petition is to the impugned order dated 16.07.2015, whereby, the application filed on behalf of the petitioner-plaintiff under Order 6 Rule 17 CPC, seeking amendment of the plaint to incorporate the relief of possession, has been declined.

Mr. Kunal Dawar, learned counsel appearing on behalf of the petitioner-plaintiff submits that application seeking amendment was filed on 09.07.2014, after the Court passed an order on 03.04.2014, while deciding the application, under Order 39 Rule 1 and 2 CPC, directing the parties to the suit to maintain status quo with regard to alienation and possession over the suit property. He

further submits that in the application for amendment, it has been stated that the petitioner was dispossessed in the month of March, 2014 and thus, the Court while deciding the application under Order 39 Rule 1 and 2 CPC, was not informed about the alleged dispossession. He prays that amendment is necessary for adjudication of the present case as the petitioner would not succeed in the suit, in view of the change in the circumstances, much less, occurrence of subsequent events.

Mr. S.S.Dinarpur, learned counsel appearing on behalf of respondents No.1 to 3 submits that once the petitioner/plaintiff was aware about alleged dispossession on March, 2014, he could have moved the application before the Court below so that the Court below while adjudicating application filed under Order 39 Rule 1 and 2 CPC, ought not to have passed the order of status quo. The amendment sought will change the nature and cause of action of the suit, which is not permissible in law.

I have heard learned counsel for the parties and appraised the paper book.

The aforementioned circumstances/facts revealed by learned counsel for the parties, irresistibly conclude that petitioner-plaintiff had been dispossessed and whether he has been dispossessed in the month of March, 2014 or on 03.04.2014, is a question of fact and matter of evidence, which can be proved during the trial. In case, the application for seeking amendment in the plaint

by incorporating the relief of possession is not allowed and the suit is permitted to be continued, i.e., for declaration that the plaintiff is owner in possession, cannot succeed in view of, occurrence of the subsequent events. The trial Court ought not to have dismissed the application on the premise that petitioner willfully concealed the factum of dispossession in the month of April, 2014.

I am not in agreement with the aforementioned finding as it would be question of evidence and the opposite party would be at liberty to cross examine the plaintiff in this regard.

Accordingly, in view of what has been observed above, the impugned order 16.07.2015, is set aside and application, Annexure P-4 seeking amendment of the plaint is allowed and the petitioner is permitted to incorporate the relief of possession, subject to payment of Court fee.

This order of mine shall not construe an expression of opinion on merits and the Court shall not be influenced while deciding the controversy between the parties while deciding civil suit.

Civil revision is allowed.

(AMIT RAWAL)
JUDGE

October 15, 2015
savita