

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

CR No.5832 of 2015 (O&M).

Date of Decision: 08.09.2015.

Kailash Chander

....Petitioner.

VERSUS

Narinder Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Kapil Khanna, Advocate for the petitioner.

SNEH PRASHAR, J.

By way of this civil revision, the petitioner has assailed the order dated 24.07.2015 passed by Additional Civil Judge (Senior Division), Phillaur allowing the application under Order 6 Rule 17 of the Code of Civil Procedure (for short, “the Code”) filed by the respondents-plaintiffs in Civil Suit No.3583 of 2013.

According to the petitioner, a suit for declaration was filed by the respondents-plaintiffs claiming to be joint owners of house bearing No.B3/87, situated in the area of Mohalla Malaha, Tehsil Phillaur, District Jalandhar alongwith other movable and immovable properties of deceased

Shri Krishan Lal on the basis of registered will dated 22.07.1998. Petitioner appeared and filed written statement contesting the suit on several grounds. He claimed to be in possession of the suit property for the past several years.

When the case was at the stage of evidence, respondents-plaintiffs filed an application under Order 6 Rule 17 of the Code seeking amendment in their pleadings to the extent that possession of the petitioner is illegal and that they are entitled to claim mesne profits from the petitioner. Their application was allowed by the trial Court vide the impugned order and aggrieved by the same, the present civil revision has been filed.

The submissions made by Mr. Kapil Khanna, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that by way of amendment sought by the respondents-plaintiffs they intend to change the entire nature of the suit. Only to cover the loopholes in their pleadings they had filed an application for amendment that too at the stage when the case was fixed for evidence and therefore it did not deserve to be allowed. To support his argument, he relied upon **Gurinder Singh vs. Gulzar Singh and another, 2015(1) C.C.C. 584** and **2010(4) C.C.C. 620.**

Perusal of the order of learned trial Court shows that the respondents-plaintiffs had filed an application for amendment in the plaint alleging that during the pendency of the suit, defendant No.1 Kailash Chander (petitioner) had taken possession of the suit property illegally. By

way of amendment they sought to add the relief of possession of the suit property and to claim mesne profits from the petitioner for illegal use and occupation of the said property. Considering all aspects of the case, the findings of learned trial Court are as under:-

“After hearing the learned counsel for the parties and perusing the file it is evidence that the present suit has been filed by the plaintiff for declaration to the effect that he along with defendant No. 2 to 7 are joint owners in possession of the suit property and relief of permanent injunction was also sought. The present application has been filed by the plaintiff for the amendment of the plaint when the case was fixed for the evidence of the plaintiff. Earlier no relief of possession and mesne profits was claimed. Defendant No. 1 has alleged that he is in possession of the suit property and during the pendency of the suit he did not take the possession of the suit property. The learned counsel for the plaintiff has relied upon the case law of Hon'ble Apex Court in Sampath Kumar Vs. Ayyakannu and another reported in 2002(4) RCR Civil 566 in which it is laid down that amendment to convert the suit for injunction into a suit for possession on the ground that possession has been taken illegally during the pendency of the suit. So, such conversion of the suit is permissible in law.

The ratio of this authority is fully applicable in the present case as under Order 6 Rule 17 the court has the

jurisdiction to allow the party to amend the plaint at any stage of the proceedings and on such terms as may be. So, in view of the principle laid down under Order 6 Rule 17 CPC a party is not to set up a new case or cause of action, which is barred by limitation, but there is no situation in the present case. The Court has discretionary power to allow application for amendment, if no prejudice is going to be caused to the other party.”

When it was the plea of the respondents-plaintiffs that the possession of the suit property had been illegally taken by the petitioner-defendant No.1 during pendency of the suit, the only remedy, they had, was to convert their suit into a suit for possession for proper and complete adjudication of the dispute between the parties. It is a separate matter that the onus to prove the pleas raised by the respondents that the possession had been taken during pendency of the suit, will be squarely on them. In the set of fact pleaded conversion of the suit is maintainable.

Thus, finding no illegality or perversity in the order of learned trial Court which calls for intervention, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

08.09.2015.
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