

CR No.5634 of 2014

[1]

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

**CR No.5634 of 2014
Date of decision:19.01.2015**

Hardip Singh

...Petitioner

Versus

Rachhpal Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajesh Bhateja, Advocate,
for the petitioner.

None for respondent no.1.

Rakesh Kumar Jain, J. (Oral)

The defendant no.1 is in revision against the order of the trial Court by which the application filed by the plaintiff for amendment of the plaint has been allowed.

In brief, the plaintiff has filed the suit for permanent injunction to restrain the defendants from taking forcible possession of the truck in question without due course of law. In the suit, the plaintiff has alleged that defendant no.1 is the registered owner of the truck in question which was hypothecated by him with the HDFC Bank after availing loan. However, in para 2 of the plaint, it is alleged that he had purchased the said truck from defendant no.1 in January 2007 and defendant no.1 had executed requisite documents for transfer i.e. Form No.29, 30 and affidavit regarding sale and

CR No.5634 of 2014

[2]

handed over possession of the said truck to the plaintiff. It is also alleged that since the month of purchase i.e. January 2007, the plaintiff has been continuously paying installments of the loan amount directly to the HDFC Bank with which the truck was hypothecated and a total sum of ₹12,57,236/- has been paid by the plaintiff to the HDFC bank.

During the pendency of the suit and before the evidence could have started, the plaintiff moved an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) in order to amend the suit for seeking declaration as well that the Court may declare that he is owner of the truck in question as he had initially filed the suit for permanent injunction only. The said application has been allowed by the trial Court against which defendant no.1 has filed the present revision petition.

Counsel for the petitioner has submitted that once the plaintiff has admitted in para no.1 of the plaint that defendant no.1 is the registered owner of the truck in question, therefore, he cannot be allowed to withdraw the admission and amend the suit to the effect that he should be declared as owner of the truck. It is also submitted that once the trial has started, the amendment cannot be allowed until and unless the applicant proves due diligence on his part. In this regard, he has relied upon a judgment of the Supreme Court in the case of **Ajendraprasadji N. Pande & Anr. v. Swami Keshavprakeshdasji N. & Ors.**, 2007(1) R.C.R. (Civil) 481.

I have heard learned counsel for the petitioner and examined the available record with his able assistance.

CR No.5634 of 2014

[3]

There is no merit in the present revision petition because the case set up by the plaintiff initially was of permanent injunction when his possessory rights were threatened by the defendants and when the defendants tried to set up their claim over the truck in question, he had to come forward with an application for amendment of the plaint to protect his title as well. He has specifically mentioned in para 2 of the plaint that he had purchased the said truck from defendant no.1 which was hypothecated with the HDFC Bank by defendant no.1 for the purpose of availing loan and had also paid the loan installments of ₹12,57,236/- to the HDFC bank directly.

In view of these facts and circumstances, especially when the trial is yet to commence as no evidence of the plaintiff has started, the plaintiff has a right to seek declaration by way of amendment instead of filing a separate suit for declaration and creating multiplicity of the litigation.

In view of the aforesaid discussion, I do not find any merit in the present revision petition and hence, the same is hereby dismissed.

January 19, 2015
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(Rakesh Kumar Jain)
Judge