

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

113

Civil Revision No.4844 of 2016

Date of Decision:01.08.2016

Dhiman Brahman Panchayat Sabha Kurukshetra and others

....petitioners

Versus

Shri Vishav Karma Mandir Sabha and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Madan Gupta, Advocate
for the petitioners

ARUN PALLI, J. (ORAL):

Vide order being assailed, dated 19.07.2016 rendered by Additional Civil Judge (Sr.Divn.), Kurukshetra, application moved by the respondent-plaintiff, under Order 6 Rule 17 CPC to amend the suit, has since been granted.

Concededly, in a suit filed by the plaintiff-respondent, it prayed for a decree for injunction, restraining the petitioners-defendants to cause any interference in its possession. And by way of proposed amendment, the case now sought to be set out by the plaintiff-respondent is, for, it was dispossessed during the pendency of the suit, and, plaintiff be allowed to amend the plaint and seek a decree for mandatory injunction.

The amendment prayed for was opposed by the petitioners-defendants on the ground that, for, the plaintiff-respondent was not in possession of the suit property, at the time of institution of the suit, thus, there was no occasion of its dispossession. Thus, it was urged that the

proposed amendment was wholly misconceived and lacked bona fides.

I have heard learned counsel for the petitioner and perused the records.

Needless to assert that the merits of the proposed amended, be that the plaint or the written statement, are not required to be gone into at the stage of considering the application under Order 6 Rule 17 CPC. Concededly, respondent-plaintiff had filed a suit for injunction simplicitor, to restrain, the petitioners-defendants from causing any interference in its possession. All what is sought to be urged by way of proposed amendment is, for, the respondent-plaintiff has been dispossessed during the pendency of the suit, therefore, it be permitted to amend the suit and pray for a decree for mandatory injunction. Question: whether the plaintiff indeed was in possession of the suit property, at the time of institution of the suit, or not shall be adjudicated upon by the trial Court in the wake of the evidence that shall be led by the parties. May be, it is found that the plaintiff-respondent was not in possession of the suit property at the time of filing of the suit. However, in the event, the Court arrives at a conclusion that the respondent-plaintiff was indeed dispossessed by the petitioners-defendants during the pendency of the suit, absence of an appropriate prayer, may result in further complications. Plaintiff can institute even a fresh suit to obtain possession, but that would result in multiplicity of litigation. In any event, vide proposed amendment, no prejudice is caused to the defendants, who, in any case is entitled to file a written statement to the amended suit and lead evidence to prove its case.

In conspectus of the position as sketched out above, no interference is warranted in exercise of jurisdiction under Article 227 of the

Constitution of India. The petition being devoid of merit is accordingly dismissed.

01.08.2016

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(ARUN PALLI)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: No