

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 494 of 2016

Date of Decision: 28.01.2016

Lokesh Sharma and Another

... Petitioner(s)

Versus

Paras Sharma

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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. A.P.Bhandari, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 15.10.2015 passed by learned Civil Judge (Junior Division), Faridabad, whereby application for amendment under Order 6 Rule 17 CPC, filed by the plaintiff, was allowed.

Relevant facts for the purpose of decision of present petition that plaintiff had filed suit for partition and declaration along with consequential relief of permanent injunction. As per plaintiff, during pendency of the suit, possession of the property in question was taken back by defendant No.2 on 31.7.2014 on the basis of order dated 23.7.2014 passed by learned Additional Civil Judge (Senior Division),

Faridabad alleging his ownership on the basis of impugned award dated 6.2.2007 and forged Will dated 6.4.2007. As per plaintiff, the same have been challenged in the present litigation as plaintiff is now out of possession and he is seeking relief of possession along with the relief already prayed for.

Defendants (petitioners) contested the application that the same is not maintainable. Defendants also took the plea that possession of the property was taken legally through Court of law in a lawful manner and prayed that application be dismissed. The Court below accepted the application for amendment of plaint erroneously.

Learned counsel for the petitioners submitted that application for amendment is not maintainable in view of amended provisions of Order 6 Rule 17 CPC. Admittedly, the application has not been filed before the commencement of the trial of the case. Rather the application was filed when plaintiff had already concluded the evidence after examining three witnesses and after tendering of some documents into evidence. In support of his argument, reliance was placed upon the judgment rendered by Hon'ble the Supreme Court in ***Vidyabai And Others v. Padmalatha and Another 2009(1) ALL MR 471.***

Having considered the submissions made by learned counsel for the petitioners and having gone through the case file, this Court is of the considered view that the Court below has rightly taken a view that amendment of plaint has become essential because of subsequent development having taken place in the case. Admittedly, the

plaintiff has been dispossessed during pendency of the suit, though as per order of the Court. Such a plea can certainly be taken by the plaintiff and he is well within his right to amend the plaint to that extent.

As regard to amended provisions of Order 6 Rule 17 CPC, for ready reference relevant provisions are being reproduced as under:-

"17. Amendment of pleadings- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The above provisions make it ample clear that amendment can be allowed at any stage of the trial if the same is necessary for the purpose of determining the real questions in controversy.

As per view taken by Hon'ble the Supreme Court in ***Vidyabai's case (supra)***, it is the primary duty of the Court to decide as to whether amendment sought for is necessary to decide the real controversy between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. Applying the same ratio of law to the

present set of facts, this Court is of the considered view that the Court below has rightly come to the conclusion that proposed amendment is essential for the just decision of the case and even the amended provision of Order 6 Rule 17 CPC makes it ample clear that the Court can allow such an amendment at any stage of the trial.

In view of above, there is absolutely no illegality in the impugned order and present petition stands dismissed.

(Shekher Dhawan)
Judge

January 28, 2016

"DK"