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

**CR-6050-2015 (O&M)
Date of decision : 04.02.2016**

Gursahib Singh

...Petitioner

Versus

Bohar Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Khunger, Advocate
for the petitioner.

None for respondent No.1.

Mr. Harpal Singh, Advocate
for respondent No.2.

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

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the order dated 27.07.2015 whereby, the application filed under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter called 'CPC') seeking to incorporate the relief of possession in a suit for permanent injunction, has been dismissed.

Mr. A.K. Khunger, learned counsel appearing on behalf of

the petitioner, submits that in response to the written statement filed by the defendants, the defendants stated that they were party to the proceedings and they have already taken the possession. Since, the status of the petitioner is of tenant, therefore, defendant cannot seek the possession except in due course of law and accordingly, sought the amendment of the plaint by incorporating the following amendments:-

"Suit for possession of the suit property i.e. land 15 kanals 11 marlas bearing Khewat No.351, Khatauni No.660 and 661 Rect. No.79 Killa No.6(4-0), 15 (8-0), 16/2(2-15), 16/1(0-16), as per jamabandi for the year 2012-13 situated at Village Khokhar, Tehsil and District Sri Muktsar Sahib.

"4-A That on 04.05.2012 the defendant No.1 forcibly with the help of armed persons who took possession of the suit property. The defendant No.1 in connivance with the revenue official got entered forged and fabricated entries in the revenue record. That the plaintiff demanded back the possession of the suit land, but the defendant No.1 refused to do so."

He submits that the trial Court has committed the illegality and perversity in not appreciating the aforementioned facts.

Service upon both the respondents has been effected.

Mr. Harpal Singh, Advocate has put in appearance on behalf of

respondent No.2 and there is no representation on behalf of respondent No.1.

Mr. Harpal Singh, learned counsel appearing on behalf of respondent No.2 submits that the amendment sought would alter the nature of the case, much less, cause of action, which is not permissible in the eyes of law and rightly so, the impugned order has been passed. The amendment, if allowed, would *prima facie* proceed the suit being barred by law of limitation, which is not permissible in the eyes of law.

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

I am of the view the impugned order declining the application is not sustainable. There is a specific pleading in paragraph 2 of the application that during pendency of the suit, plaintiff had been dispossessed. Subsequent event can be allowed to incorporated as an amendment of the plaint. The Court cannot non-suit the party for this reason, much less, cannot adjudicate *lis* as original relief sought had become redundant. The trial Court ought to have embarked on a path of noticing on which date, the petitioner-plaintiff was dispossessed. It is a matter of evidence which would be proved on record in accordance with law, but not in the manner as has been adopted.

Accordingly, the impugned order is set aside and the application filed under Order 6 Rule 17 CPC is allowed and the petitioner-plaintiff is permitted to cause amendment in the plaint.

With the aforementioned observations, the revision petition is allowed.

04.02.2016
yogesh

(AMIT RAWAL)
JUDGE