

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

Civil Revision No.6814 of 2016

Date of Decision: 07.10.2016

Suman Jain

.....Petitioner

Vs

Swaran Kanta Jain and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Arun Veer Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 11.08.2016 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Ludhiana vide which an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint was dismissed.

[2]. Brief facts as gathered from the record are that the plaintiff filed a suit for permanent injunction seeking to restrain the defendants from carrying out any construction or changing the nature of the second floor of the house in any manner. Plaintiff alleged that the suit property was joint and was not partitioned amongst the parties by metes and bounds. At the time of filing of the suit, relief of partition could not be claimed in

the suit. By moving an application for amendment of the plaint, the plea of separate possession was sought to be introduced.

[3]. Evidently, the original suit is for permanent injunction. A plea for introducing suit for separate possession by way of partition by metes and bounds would be totally a separate cause of action and that would change the nature of the suit. In the suit for permanent injunction, restraint order was sought against the defendants from carrying out any construction and from causing interference in the possession of the plaintiff. By way of amendment, the relief of partition of the property would change the nature of the suit itself and the proposed amendment would not help in determining the real controversy between the parties in a suit for permanent injunction.

[4]. A new relief altogether was sought to be introduced by way of amendment which can be agitated by the plaintiff in a separate suit. Issues were framed in the suit on 13.02.2015 and the trial has already commenced. The relief of partition is a different cause of action, which can be agitated by the plaintiff in a separate proceedings.

[5]. The only apprehension of the plaintiff/petitioner is that the subsequent suit may not be hit by Order 2 Rule 2 CPC. As already noticed by the trial Court, the alleged apprehension of

the petitioner was found to be misconceived and unfounded.

[6]. In view of above, I do not subscribed the arguments of learned counsel for the petitioner. This revision petition is accordingly dismissed.

October 07, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No