

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

CR No.7100 of 2016(O&M)

Decided on. 26.10.2016.

Rajeev Singla

.....Petitioner

Versus

Manjit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 08.09.2016 passed by the learned Additional Civil Judge (Sr. Division), Bathinda, whereby the application moved by the petitioner-plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of the plaint has been dismissed.

2. I have heard Mr. Deepak Aggarwal, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

3. Learned counsel for the petitioner contended that the present suit was filed by the petitioner for possession of the land/plot in dispute. During the pendency of the suit, the alienation was made. The subsequent suit has been filed to challenge the said alienation. He contended that in the present suit, due to *bona fide* inadvertence and oversight, plaintiff forget to mention the para with respect to the cause of action, which is only a technical defect. The plaintiff-petitioner only

wants to amend the plaint to incorporate the para regarding the cause of action, which will not change the nature of the suit and in case the amendment is allowed, plaintiff-petitioner will not lead any fresh evidence.

4. I have duly considered the aforesaid contentions.

5. The plaintiff-petitioner has filed the suit for possession and in the consequential relief, he has sought the decree for permanent injunction restraining the defendants from alienating the suit property to any other person and from raising the construction. It is alleged that due to bona fide mistake and accidental slip, the plaintiff could not mention the para regarding the cause of action in the original plaint and now the plaintiff-petitioner wants to incorporate para no.19-A regarding the cause of action, which reads as under:-

“19-A. That a cause of action accrued to the plaintiffs, against the defendants, to file the present suit on 17.08.1973, when ½ share of land measuring 6 Bighas was purchased by Diwan Chand, Vir Chand, Jawahar Lal ss/o Sh.Mohan Lal s/o Sh.Surta Mal and Des Raj, Murli Dhar ss/o Sh.Nirmal Dass s/o Sh.Tek Chand and Amar Nath alias Om Parkash s/o Sh.Ram Lal s/o Sh.Nirmal Dass and they got the possession of land of eastern side of ½ share in 6 Bighas, on the dates when above mentioned Kapoor Chand s/o Sh.Goria Mal, Vidhya Rani w/o Sh.Harbans Lal and Ramesh Lal s/o Sh.Dhannu Mal sold their ½ share of 6 Bighas and delivered possession of same on the western side, on 26.05.1997 when Jawahar Lal applied to revenue authorities for demarcation of their land in Khasra No.2150/2 Patti Mehna, Bathinda, on 19.07.1997 when Sh.Roshan Lal retired Naib-Tehsildar was appointed Local Commissioner by revenue authorities on application dated 26.05.1997 and after spot

inspection and making measurements, he made report and has specifically mentioned that land measuring 325 sq. yards was in excess possession of owners of sale deed No.3536 dated 05.10.1992 and land measuring 119 sq. yards in excess possession of Harnam Singh and others on south side of 6 Bighas; on 12.04.1993 when notification no.4/13/92-I LG III/3479-80 was issued by the Punjab Govt. sanctioning TP Scheme No.16 illegally and against facts; on 07.10.2000 when draftsman Rajinder Gupta after making measurements on spot and prepared site plan of land measuring 2580 sq. yards which was in possession of vendees depicting true picture of the spot; on 11.11.1997 when sale deed No.4041 for land measuring 500 sq. yards and on 08.12.1999 when sale deeds no.6131, 6132 regarding land measuring 211 sq. yards and 211 sq. yards totaling 922 sq. yards were executed, on the date when sale deed no.6869 and 6870 dated 30.12.1999, sale deed No.7201 dated 12.01.2000 were executed and a street 30' wide was also illegally and against facts were shown, which land in reality was in possession of vendees of sale deed no.3536 dated 05.10.1992; on the date when vide sale deed no.4883 dated 23.09.2002 Gurdev Singh, Avtar Singh ss/o S.Surjit Singh have allegedly purchased land measuring 400 sq. yards from vendee; on 14.06.2007 when CS No.13 dated 06.01.2003 was withdrawn with permission to file fresh suit on same cause of action was brought; on 14.06.2007 when order was passed; on the date when costs assessed by Court regarding said suit was deposited in the Court; on the date when during the pendency of above said suits titled as plaintiff No.1 and Des Raj Vs. Surjit Singh, the defendants No.3 to 5 took illegal and forcible possession of land shown in site plan marked as A,B,C,D, on the dates when defendants no.3 to 5 allegedly executed sale deed No.6331 dated 24.09.2003, sale deed no.6332 dated 24.09.2003, sale deed no.9657

dated 09.11.2004 by mentioning addition of 20' wide road in these sale deeds, illegally and against facts, on the dates when these persons allegedly sold plots, vide alleged sale deed No.8188, 8189 dated 06.10.2004, sale deed no.2441, 2442 dated 24.05.2005 were executed and offence of contempt of court by knowingly, willfully, dishonestly order dated 26.12.2002 of status quo was violated and disobeyed, on 02.10.2006 when Kanungo made his demarcation report dated 02.10.2006 and the land in illegal, forcible possession of defendants was found and shown, on 03.02.2006 when plaintiffs have submitted an application ADC(D) cum Commissioner, M.C.Bathinda on the date when above said criminal case FIR No.464 dated 01.09.2006 was registered, In Feb 2004 when vendors of plaintiffs no.1 & 2 got back possession of land owned by them from the defendants, on 01.03.2005 when the plaintiff no.1 purchased land measuring 500 sq. yard's vide sale deed no.14292 and the plaintiff no.2 purchased land measuring 1018 sq. yards vide sale deeds no.14287, 14293, 14296 as detailed above and became owner in possession of same; on June 2005 when the defendants took illegal and forcible possession of land of plaintiffs and then when plaintiffs came to know about the execution of above said illegal sale deeds in question, executed by them, out of land comprising in suit land, on 18.09.2006 when plaintiffs no.1 & 2 through their attorney submitted an application to D.C. to order delivery of possession which was purchased by them; on 19.09.2006 when Tehsildar marked the above said application fo plaintiffs to Kanungo with direction to submit his report after making measurements and demarcations, who thereafter submitted his demarcation and Naksha Twafat to Tehsildar on dated 02.10.2006 and had reported that land measuring 111 sq. yards was in illegal possession of defendant no.1 marked as E-8, land

measuring 5 sq. yards in possession of defendant no.2 marked as E-9 and land measuring 357 sq. yards in possession of defendant no.6 to 9 marked as E-11; on 26.12.2006 when plaintiffs no.1 & 2 through their attorney submitted an application to Tehsildar, Bathinda indicating khasra numbers in Kanungo's demarcation report dated 02.10.2006; on 22.01.2007 when Kanungo made his supplementary report in his respect, on the dates when defendants threaten to alienate the suit land and also to raise construction therein illegally, forcible, without any right, title or concern and thereby to cause an irreparable loss to the plaintiffs; on the dates when plaintiffs repeatedly requested the defendants to admit their above said claim over the suit land and to deliver back them possession of above said land, which was in their illegal and forcible possession and also not to make above said threats, a week prior to the date of filing of the suit when the defendants actually attempted to achieve their above detailed defarious designed illegal motive to alienate land which was neither owned by them nor have any right over the same and also more than their share and also illegally, forcibly, without any due course of law and also actually attempted to start illegal and unauthorized constriction in the suit land and tow days prior of filing of the suit when defendants flatly refused to accede to the above said genuine requests of plaintiffs; hence present suit is being filed within limitation. Even otherwise as per law there is no limitation when relief of possession is claimed, on the basis of title, from an illegal occupant.”

6. No doubt, as per Order 7 Rule 1 (e) CPC, the plaint should contain the facts constituting the cause of action and as to when the said cause of action arose to the plaintiff. The cause of action to file the suit is to be determined by taking into consideration the entire

substance of the plaint and not by referring to a single para in the plaint. The present application moved by the petitioner to amend the plaint seems to be an effort to introduce the new facts, which is evident from the aforesaid para reproduced above which runs into four pages. It seems that the plaintiff-petitioner wants to rectify the faults and fill up the gap in his case which have come on record during the course of evidence. Thus, the application for amendment of the plaint moved by the petitioner is not *bona fide*.

7. Moreover, as per proviso to Order 6 Rule 17 CPC, no application for amendment should be allowed after the commencement of the trial unless the Court comes to the conclusion that in spite of due diligence, the party could not have raise the matter before the commencement of the trial. To support this view, reference can be made to cases **P.A. Jayalakshmi Vs. H.Saradha & Ors. 2011(7) R.C.R (Civil) 224** and **Ajendraprasadji N. Pande & Anr. Vs. Swami Keshavprakeshdasji N. & Ors. 2007(1) R.C.R (Civil) 481**.

8. In the instant case, the requirement of the aforesaid proviso to Order 6 Rule 17 CPC are also not fulfilled. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

9. Thus, the present revision petition having no merits, is hereby dismissed.

October 26, 2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

(DARSHAN SINGH)
JUDGE