

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

CR No.7722 of 2016(O&M)

Date of decision:17.11.2016

Mohinder Singh and othersPetitioners

VERSUS

Darshan Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vikasdeep Singh, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 26.09.2016 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Sultanpur Lodhi whereby application filed by the respondent/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'CPC') for amendment of the plaint has been allowed.

Counsel for the petitioners has submitted that the respondent/plaintiff filed a suit for declaration that he is owner in possession of plot/taur measuring 4 kanals with consequential relief of permanent injunction. It is the categoric plea of respondent/plaintiff in the plaint that he is in possession of the suit property and the petitioners/defendants be restrained from interfering or taking forcible possession of the plot/taur.

The petitioners/defendants filed the written statement and, in turn, controverted the allegation with regard to the respondent/plaintiff being in possession of the suit property with the plea that it is the

defendants who are in possession of the suit property. It is further argued that on the basis of pleadings of the parties, issues were framed and thereafter the respondent/plaintiff availed 10 opportunities for adducing evidence and then filed the instant application for adding the relief of possession by way of amendment. It is vehemently argued that the present application is clearly hit by the proviso appended to Rule 17 of Order 6 CPC as the amendment has been sought after commencement of trial and availing 10 opportunities for adducing evidence.

I have heard counsel for the petitioners, perused the paper-book particularly the plaint (Annexure P-1), written statement (Annexure P-2), application for amendment (Annexure P-3), reply thereto (Annexure P-4) and the order impugned.

Indisputably, the application for amendment was filed after framing of issues and the case being adjourned on a number of occasions for adducing evidence by the respondent/plaintiff. The proviso appended to Rule 17 of Order 6 CPC does not constitute a complete bar seeking amendment after commencement of trial. Equally settled is that delay in filing an application for amendment itself cannot constitute a good ground for rejection of the application if the amendment is otherwise necessary for complete and effective adjudication of the matter in controversy. In this context, reference can be made to **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others**, 2010(1) RCR (Civil) 27, wherein the Apex Court after taking into consideration the proviso appended to Rule 17 has laid down certain principles to be taken into consideration while deciding an application for amendment of pleadings.

The respondent/plaintiff has filed a suit for declaration claiming himself to be in possession of the suit property. On the contrary, the petitioners/defendants have alleged themselves to be in possession of the suit property. Possession of the suit property is a disputed question to be adjudicated upon on the basis of evidence to be adduced by the parties. However, in case the respondent/plaintiff fails to establish his possession of the suit property, his suit seeking declaration would fail being hit by the proviso to Section 34 of the Specific Relief Act, 1963. If ultimately suit of the respondent/plaintiff fails for want of seeking relief of possession as a consequential one, the respondent/plaintiff may initiate another proceedings seeking declaration along with relief of possession and the parties would be unnecessarily subject to another bout of litigation. In these circumstances, it can be safely held that allowing amendment of the plaint is necessary for complete and effective adjudication of the matter in controversy, when otherwise the petitioners can well be compensated with costs for delay attributable to the respondent/plaintiff. However, the trial Court has already imposed adequate costs. In this view of the matter, I do not find any reason to interfere in the discretion exercised by the trial Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

NOVEMBER 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no