

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

CR No.7829 of 2016(O&M)

Date of decision:21.11.2016

Ram Chand

....Petitioner

VERSUS

Mohan Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.P. Kaushal, Advocate for
Mr. Navjot Singh, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 05.09.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Jalandhar, whereby application filed by respondent No.1/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 petitioner has submitted that the respondent/plaintiff has filed a suit for possession by way of specific performance of agreement to sell dated 01.11.2006 in respect of land measuring 21 kanals 10 marlas, detailed in head-note of the plaint. It is further submitted that by way of the proposed amendment, the respondent/plaintiff has sought to add additional relief/alternative relief of recovery in respect of land that has been acquired by the Government in regard whereof compensation has been awarded to the defendant. It is further argued that as the facts sought to be pleaded by way of amendment were well within the knowledge of the respondent/plaintiff and the proceedings have reached the stage of arguments, the proposed amendment

is clearly hit by the proviso appended to Rule 17 of Order 6 CPC, therefore, application for amendment is liable to be rejected. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **J. Samuel and others Vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to note that Hon'ble the Supreme Court in **Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27** after noticing proviso appended to Rule 17 of Order 6 CPC, has culled out certain important aspects to be considered while dealing with an application for amendment of pleadings. The Court has laid down that amendment cannot be allowed, if it causes such a prejudice to the other side for which he cannot be compensated with costs.

By way of the proposed amendment, respondent/plaintiff has sought alternative relief of recovery in respect of part of the suit land that is stated to be acquired by the Government. As the respondent/plaintiff has sought the relief of possession by way of specific performance of the agreement to sell and the Court if eventually finds that he is not entitled to seek specific performance either in regard to the whole land or a part of the suit land, the Court otherwise is competent to allow an alternative relief of recovery. That being so, there is no question of the petitioner's suffering any irreparable loss or injury in case, the proposed amendment is allowed. The mere fact that the respondent/plaintiff allegedly knew about the factum of acquisition at a stage prior to filing of the application itself cannot be a

ground to deny the relief when the case is examined in the light of ratio laid down in Revajeetu Builders and Developers’s case (supra).

For the foregoing reasons, finding no merit, the petition is dismissed in *limine*.

NOVEMBER 21, 2016
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no