

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 114

Civil Revision No.1145 of 2017(O & M)
Date of Decision: February 21, 2017

Anil Kumar Sharma

..... PETITIONER

VERSUS

Sohan Singh (deceased) through legal heirs & another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Aashish Chopra, Advocate, for the petitioner.

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Jaspal Singh, J

1. By virtue of instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated December 20, 2016 (Annexure P-6) passed by the Civil Judge (Junior Division), Phillaur, vide which, applications under Order VI Rule 17 CPC for seeking amendment of the plaint and under Order I Rule 10 CPC seeking impleadment preferred by the petitioner – plaintiff have been dismissed.

2. The facts giving rise to the instant lis are that on March 18, 2014, petitioner – plaintiff filed a suit claiming himself to be owner in possession of the suit property, fully detailed & described in the head note of the plaint, and seeking injunction restraining the defendants, their agents, servants, attorneys etc. from dispossessing him from the suit property. Vide order dated March 19, 2014 passed by the trial court, the parties were

directed to maintain status-quo regarding actual and factual position of the suit property till March 31, 2014. In response to the notice issued to respondents – defendants, they appeared and filed written statement raising various preliminary objections and *inter alia* taking a specific stand that property in question was given to the petitioner – plaintiff as a licensee to reside in 1999 without any charges, and further that, a writing to this effect (licensee) was also executed. It was only thereafter, petitioner – plaintiff preferred an application under Order VI Rule 17 CPC for amendment of the plaint. Through the proposed amendment, the petitioner – plaintiff intends to convert the suit for permanent injunction into a suit for specific performance of an oral agreement to sell dated March 20, 2009, allegedly executed by defendant No.1 in his favour in respect of the property in dispute for a total sale consideration of ₹ 7 lac, and further directing defendant No.1 to execute regular sale deed in his favour as per the site plan attached and marked as ABCD shown in red colour in the site plan. Furthermore, through another application under Order I Rule 10 CPC, the petitioner – plaintiff has sought impleadment of Gurdev Kaur wife of Sohan Singh.

3. The contention of learned counsel for the petitioner is that necessity for amendment of the plaint arose on account of the fact that respondent – defendants have taken a false plea to the effect that petitioner – plaintiff is in possession of the suit property as a licensee since 1999. Learned counsel has further argued that the impugned order declining the proposed amendment is against law and facts. Infact, at the time of filing the suit for injunction, petitioner – plaintiff was not aware that respondents – defendants would raise a dispute with regard to the disputed property and when such a question was raised, the petitioner – plaintiff had to file an

dated March 20, 2009. The proposed amendment does not in any way change nature of the suit or relief claimed, rather it is necessary for proper and effective adjudication of the matter in controversy between the parties. Moreover, the suit is still at its initial stage, and the respondents – defendants are neither going to suffer any loss nor any prejudice is being caused to them. At the most, they can be compensated by way of costs.

4. While concluding his arguments, learned counsel for the petitioner has submitted that since the impugned order is not sustainable in the eyes of law, it is liable to be set aside. Consequently, the applications deserve to be allowed.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but find the same to be without any legal weight.

6. Undoubtedly, initially a suit for permanent injunction seeking injunction against the respondents – defendants or their agents, servants or attorneys etc. was filed for restraining them from interfering into his peaceful possession over the disputed property. There is not even a slightest reference in the entire plaint that petitioner – plaintiff is in possession of the suit property on the basis of an oral agreement to sell dated March 20, 2009, rather he has simply claimed himself to be owner in possession. No reference of the alleged agreement to sell or sale consideration was reflected in the plaint. Now, by way of proposed amendment, the petitioner – plaintiff is making an endeavour to change the entire nature of suit for permanent injunction to specific performance with consequential relief of permanent injunction which is otherwise not permissible under the provisions of Order VI Rule 17 CPC. An application

claim on the oral agreement to sell just to twist the entire facts. As far as impleadment of Gurdev Kaur as defendant No.2 is concerned, she is wife of defendant No.1. It has simply been alleged by the respondent – plaintiff that Gurdev Kaur has tried to dis-possess the respondent – plaintiff from the suit property through defendant No.1. Infact, there is no cause of action against Gurdev Kaur. She is being sought to be impleaded just being the wife of defendant No.1. The dispute, if any, is in between plaintiff and defendant No.1, husband of Gurdev Kaur. Moreover, impleadment of a person as a party to the suit cannot be allowed just on the wish and whim of the plaintiff until and unless there is some relief claimed against him/her. Otherwise also, amendment of the plaint has already been declined by the trial court which has been upheld by this Court. The trial court has rightly declined the application for amendment of plaint as well as the application under Order I Rule 10 CPC, and the impugned order is based upon sound principles. There is no infirmity, illegality or perversity in the impugned order, rather the instant petition is devoid of any merits, as such, it stands dismissed.

February 21, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No