

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

CR No.1499 of 2017 (O&M)

Date of decision: 08.09.2017

Lal Chand

...Petitioner

Versus

Smt. Sheela Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. T.V.S Lehal, Advocate
for the petitioner.

Mr. Jagjit Singh, Advocate
for respondents No.1 and 2.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 21.10.2016 passed by the Additional Civil Judge (Sr.Divn.), Pathankot whereby application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter to be referred as 'the CPC') for amendment of plaint filed by the respondents/plaintiffs has been allowed.

Counsel for the petitioner has submitted that Sheela Devi and others filed a suit for permanent injunction restraining the petitioner/defendant from interfering, encroaching upon, changing nature by raising construction and forcibly dispossessing the plaintiffs from plot/area measuring 7 Marlas, Marked ABCDEF and depicted red in the

site plan detailed in head note of the plaint, in April 2014. In the suit, respondents/plaintiffs have given address of the petitioner/defendant being resident of House No.B-VIII/49 Mohalla Kullian, Sujjanpur, Tehsil and District Pathankot. The Court issued summons for service of the petitioner and the petitioner was served at the given address as per the report dated 25.04.2014 (Annexure P-5) prepared by Jagdish Ram, Process Server. More than two years of filing of the suit, respondents/plaintiffs filed application for amendment of the plaint (Annexure P-3) alleging that the defendant is resident of Bath Saheb, Tehsil and District Pathankot but inadvertently address was mentioned as House No.B-VIII/49 and the address of the defendant may be corrected.

The petitioner filed reply to the application contesting claim of the respondents/plaintiffs. It is argued with vehemence that the learned trial Court without appreciating plea of the petitioner in right perspective allowed the application by holding that the petitioner/ defendant has not produced any document on record proving his possession of house No.B-VIII/49. It is further submitted that address of a party is not a part of plaint and the address is given for the purpose of service of contesting party. It is further argued that the amendment was sought by the respondents/plaintiffs with a malafide intention that factum of mentioning address of the house in question and service of the petitioner on the said address may not cause prejudice to the right of the plaintiffs at the time of final disposal of the suit. The last submission made by counsel is that as the application filed

by the respondents/plaintiffs is malafide, the same is liable to be dismissed.

Counsel representing the respondents has supported the impugned order with submission that the petitioner has failed to produce any documentary evidence before the trial Court and so also before this Court to prove his possession of house No.B-VIII/49.

I have heard counsel for the parties, perused the paper book particularly annexures appended with the petition.

The arguments raised by counsel for the petitioner with regard to date of institution of suit, service of summons at the address given in the plaint and the application for amendment having been filed more than two years after institution of the suit get substantiated from various annexures appended with the petition. Under the given circumstances, there was no occasion for the Court to allow application of the respondents/plaintiffs merely on the ground that due to inadvertence wrong address has been given and the same is liable to be corrected. It is difficult to fathom as to how the amendment sought to be made in address of the petitioner is necessary for complete and effective adjudication of the matter in controversy. On the contrary, failure of the petitioner to produce documents in regard to his possession of the house in question i.e. B-VIII/49 would be of no consequence for deciding application for amendment. It further appears that the instant application was filed with an ulterior motive to achieve.

For the foregoing reasons, the petition is allowed, impugned

order is set aside and application for amendment of the plaint is ordered to be dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case nor would cause prejudice to either of the parties at the time of final decision of the suit.

08.09.2017
ashok/sd

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No