

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

CR-2730 of 2015

Date of Decision: 17th July, 2017

NAHAR SINGH & ORS.

....Petitioners

V/S

MOHINDER KAUR & ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Siddharth Sharma, Advocate
for the petitioners.

Mr. S.S. Salar, Advocate
for the respondents No. 1,2,4 & 6.

ANIL KSHETARPAL, J. (Oral):

Plaintiff has filed the present revision petition under Article 227 of the Constitution of India laying challenge to the order passed by the Civil Judge (Jr. Divn.), Malerkotla, dated 3rd March, 2015.

Plaintiff had moved an application under Order 6 Rule 17 CPC, seeking amendment of the pleadings. It was pleaded that plaintiffs and defendants are joint owners in possession in equal share to the extent of 1/6th share out of the total land measuring 208 Kanal and 2 Marlas. Now, the plaintiff wants to add that he is owner to the extent of 1/18th share. He further wants to add that the plaintiff is in joint possession of the land to the extent of 1/18th share.

The application seeking amendment to the plaint has been rejected by the Court below by assigning following two reasons:

- i) The amendment would change the nature of the suit.
- ii) If amendment is allowed, plaintiff would be able to come out with

In my considered opinion, both the reasons assigned by the Court are erroneous. Reading of the plaint and amendment as sought for do not establish that if the proposed amendment is allowed there would be any change in nature of the suit. Originally, the suit was filed for declaration to the effect that the plaintiffs and defendants are joint owner in possession by way of proposed amendment. Plaintiff is pleading that he is in joint possession to the extent of 1/18th share. The plaintiff is only giving the specific share to which he is entitled.

The Court has further declined the prayer for amendment of the plaint on the ground that the plaintiff would come out of mischief of Section 34 of Specific Relief Act. If the parties are in joint possession, Section 34 of the Specific Relief Act has no application. Even co-owner is deemed to be in possession of every inch of land. Co-sharers/co-owners are always considered to be in joint possession of the land. Section 34 of the Specific Relief Act lays down that if in the opinion of the Court, a party is entitled to further relief but such relief has not been prayed, the Court can dismiss the suit.

In the present case, once the plaintiff from the very beginning had claimed that the parties to the suit are co-sharers and therefore, deemed to be in joint possession, then, Section 34 of the Specific Relief Act would have no application. Proviso to Section 34 would be wholly inapplicable in such circumstances.

For the reasons stated above, the impugned order passed by the learned Civil Judge (Jr. Divn.), Malerkotla, on 3rd March, 2015, is set aside. Application filed by the plaintiff under Order 6 Rule 17 CPC seeking amendment of plaint is allowed.

Since the suit was filed in the year 2009, therefore, learned trial Court is requested to decide the suit expeditiously.

Needless to say that the defendants would be at liberty to raise all points in their defence.

Revision petition is allowed.

(Anil Kshetarpal)
Judge

17.07.2017

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No