

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

Civil Revision No. 2479 of 2017

Date of decision:- April 06, 2017

RANI SHARMA

...PETITIONER..

VERSUS

RAJINDER KUMAR

...RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Rajesh Gupta, Advocate,
for the petitioner.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 24.03.2017 passed by Civil Judge (Junior Division), Ludhiana whereby application filed by the respondent-plaintiff under Order VI Rule 17 read with Section 151 CPC for the amendment of the plaint, has been allowed.

2. Assailing the impugned order dated 24.03.2017, it has been submitted by learned counsel for the petitioner that the same is very cryptic in manner and has been passed by ignoring the actual facts as well as the legal proposition. In fact, initially the respondent-plaintiff had pleaded that the possession was with him but subsequent thereto, he filed an application for appointment of local commissioner and when the petitioner-defendant filed reply to the said application to the effect that local commissioner

cannot be appointed to ascertain the factum of possession, the said application was withdrawn by respondent-plaintiff on 02.05.2016 on the ground that he was forcibly dispossessed by the petitioner-defendant. But the application was filed after about 1 year which is clearly an attempt to fill up the lacuna and is not permissible under law. Moreover, the suit was filed by respondent-plaintiff in the month of April 2010 and on receipt of notice, thereof, the petitioner-defendant had appeared in the suit and filed her written statement in the month of May 2011 specifically pleaded that in fact she was in possession of the suit property. Moreover, plaintiff-respondent did not disclose as to on which date, month or year he has been dispossessed forcibly. So, in the given circumstances, the amendment of the plaint in respect of the possession is an afterthought and is just to fill up the lacuna. As such, the impugned order is not sustainable in the eyes of law and deserves to be set aside by way of acceptance of instant revision.

3. This Court has given a deep thought to the submissions made by learned counsel for the petitioner-defendant and has scrutinized the impugned order besides going through the other documents available on file.

4. Undisputably, the plaintiff-respondent has filed the present suit seeking relief of specific performance of agreement to sell dated 12.06.2007 as well as permanent injunction claiming that possession of suit land/subject matter of the agreement to sell was delivered to him at the time of its execution. It has been specifically pleaded by him that during the pendency of the suit, he has been dispossessed by the defendant i.e. the present petitioner and on that ground he has sought amendment of the plaint

including the relief of possession and a complaint with regard to the dispossession by force was also lodged by the respondent-plaintiff with the police and the police is already seized of the matter in that regard. The lodging of the complaint with the police has been admitted by the petitioner when she was subjected to cross-examination. Moreover, the case of the petitioner stands fully covered with the observations made by this Court in case *“Balbir Singh v. Satnam Singh, 2016 (2) LAR 676*. In the said case, initially, the plaintiff had filed a suit for symbolic possession by way of specific performance of agreement to sell with a consequential relief of permanent injunction. During the pendency of suit, the plaintiff was forcibly dispossessed by the defendants. Subsequent thereto, he intended to amend the plaint to introduce the relief of possession and making some consequential changes/amendments in the plaint. While allowing the application for the amendment of the plaint, it was held that the proposed amendment was only in addition of the relief of possession due to the subsequent event and such an amendment can even be allowed at a belated stage.

5. In the instant case, the proposed amendment would not change the character and nature of the suit. Rather, this Court is of the considered view that proposed amendment, which has been allowed vide impugned order is essential to determine the real question in controversy between the parties. Moreover, the petitioner-defendant is not going to suffer any irreparable loss. No prejudice is also caused to the petitioner/defendant in allowing the application for amendment. Thus, this Court does not find any infirmity, illegality and perversity in the impugned order and the same is

absolutely in consonance with the settled proposition of law governing the amendment of the pleadings.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the instant petition is dismissed with no order as to costs.

April 06, 2017
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(JASPAL SINGH)
JUDGE

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