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

**Civil Revision No.5786 of 2017
Date of Decision: 30.08.2017**

Balkar Singh

.....Petitioner

Vs

Dara Singh (deceased) through his LRs

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 29.07.2017 passed by Civil Judge (Jr. Divn.) SBS Nagar whereby the application under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

[2]. Brief facts are that the plaintiff filed a suit for mandatory injunction directing the defendant to cease to use and occupy the house in dispute being co-owner in possession, to restrain him from dismantling any part of the house, from changing the nature and also the identity of the suit house illegally. In the

said suit filed for mandatory injunction for directing the defendant to vacate the suit property, the plaintiff intended to amend the prayer clause of the plaint whereby seeking to add alternative prayer of relief of possession of the suit property in the event of finding the defendant to be not a gratuitous licensee in the suit property. Relief of possession being alternative in nature is sought to be incorporated by way of the proposed amendment.

[3]. In the written statement filed by the defendant, plea of co-sharer was taken. The proposed amendment was opposed by the defendant on the ground that the proposed plea is destructive in nature and would provide contradictory pleadings and would do away with the earlier stand taken by the plaintiff. Both the parties have led their evidence.

[4]. Trial Court dismissed the application vide the impugned order dated 29.07.2017.

[5]. I have heard learned counsel for the petitioner.

[6]. By way of proposed amendment, the plaintiff sought to incorporate the plea of possession which necessarily would demonstrate that the defendant, if not found to be gratuitous licensee, then for the purposes of suit for possession his status be considered as that of a trespasser. In the cross-examination

of the plaintiff, the factum of defendant being a co-sharer in the property has been admitted.

[7]. It is a settled principle of law that all bona fide amendments are to be allowed, unless and until it provides for irreparable loss to the opposite party. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties.

[8]. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives discretion to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism, but facts of each case have to be appreciated.

[9]. In the instant case, despite the fact that a specific stand was taken by the defendant in the written statement wherein defendant claimed himself to be a co-sharer, still no application was moved for amendment of the pleadings. The stand taken by the plaintiff in the plaint is that the defendant is a gratuitous licensee. Since the suit for mandatory injunction against a co-sharer was questionable in terms of maintainability, despite that

no effort was made by the plaintiff to amend the pleadings. Both the parties kept on leading their evidences. With the evidence on record, a valuable right has accrued in favour of the defendant in order to attract the very maintainability of the suit on the basis of material pleadings and evidence on record.

[10]. The admission made by the plaintiff in his cross-examination would also show that the defendant is a co-sharer in the property in question. The pleadings made in the written statement coupled with the fact that the admission made by the plaintiff in his cross-examination cannot be allowed to be withdrawn as it will prejudice the case of the defendant beyond repairs. Since the case is at the stage of arguments, a material prejudice will be cause in case amendment of the plaint is allowed at this juncture.

[11]. In view of above, I do not see any error or jurisdiction committed in the impugned order by the trial Court. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

August 30, 2017

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No