

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

CR No. 7532 of 2015 (O&M)

Date of Decision: November 14, 2017

Bhupinder Singh and others

...Petitioners

Versus

Rajinder Deva Orphanage Trust and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sunil Garg, Advocate
for the petitioners.

Mr. Animesh Sharma, Advocate
for respondent nos.1 & 2.

Mr. Hardeep Singh, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

The petitioners are aggrieved by the order dated 14.10.2015 passed by the Addl. Civil Judge (Sr. Division), Patiala, vide which the application filed under Order 6 Rule 17 of CPC seeking amendment in the plaint was dismissed.

The copy of plaint and written statement were not placed on record. The respondents have provided its copy.

It is necessary to notice the facts first. Plaintiffs filed a suit against a Trust impleading its President and one Gurnam Singh. It was pleaded that they were lessees of plot no. 2 and the area measuring

39' x 161.6'. A prayer for injunction was also made. The plaintiffs had given details of the earlier litigation which went to the High Court. A compromise was effected and the rent was increased. It was pleaded that after the compromise, the plaintiff came to know that defendant no.1 before the compromise had already inducted defendant no.3 as a direct tenant and this fact was concealed from the High Court and they had moved a contempt petition against the Trust and criminal proceedings were launched. Thereafter compromise was set aside. It was pleaded that a suit for damages was filed by the father of the plaintiff, which later on was compromised in 2001.

Para 6 of the plaint is important where it was pleaded that father of the plaintiff had requested the Trust a number of times to join defendant no.3 in the proceedings and seek his eviction. After the death of Sardara Singh, plaintiff again requested defendant no.1 but they kept on evading the issue for reasons known to them. It was alleged that defendant no.3 in connivance with defendants no.1 & 2 were interfering in the possession over the property in dispute. It was pleaded that the plaintiffs were lessees of the portion measuring 39' x 166.6' and defendant no.3 had no concern.

Defendants no.1 & 2 pleaded that the suit was vexatious. It was pleaded that the lease deed had not been produced. It was denied that Sardara Singh or the plaintiff had ever requested them to join defendant no.3 and seek his eviction.

Defendant no.3 filed his separate written statement and pleaded that he was in possession of the front portion measuring 30' x 20' and he was running a workshop under the name and style of M/s. Pritam Motor Workshop and had raised construction. It was denied that Sardara Singh had taken an area measuring 39' x 166' on rent. It was also pleaded that the plaintiff had failed to produce the original lease deed.

The plaintiffs filed the rejoinder to both the written statements denying the factum.

The suit was filed in 2009. On the of absence of the plaintiffs, the suit was dismissed in default in August 2013. It was restored in October 2014. The plaintiffs did not press for arguments on the stay application. The Court framed the issues and fixed the case for evidence when the plaintiffs moved an application seeking amendment in the plaint pleading that defendant no.3 had taken forcible possession of an area measuring 20' x 9', shown in red colour in Annexure P-1 and they wanted to amend the plaint and seek possession of that area. The respondents filed their reply. The trial Court after hearing both the sides dismissed the application.

I have heard both the sides.

The counsel for the petitioners initiating the submissions urged that the amendment can be allowed even after the trial has commenced and in this case, the trial had not commenced and the amendment is necessary as possession of part of the property has been

taken over by defendant no.3. Reliance was placed upon *Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. 2007(2) RCR (Civil) 830* and *Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) & Ors. 2007(3) RCR (Civil) 866*. It was urged that it would not change the nature of the suit and the trial Court had gone wrong in holding that a separate suit could be filed and that aspect has also to be adjudicated in this litigation.

The submission on the other hand is that the plaintiffs themselves had admitted that defendant no.3 was in possession of the property. It was urged that defendant no.3 had specifically pleaded that he was in possession of the area and was running a workshop for the last several years and had the possession been taken during the pendency of the suit, the plaintiffs would have got a FIR registered or would have taken some other steps and this goes as to show that the plea set up by them was wrong.

A perusal of the pleadings would show that the plaintiff had referred to the fact that defendant no.1 had inducted defendant no.3 as a tenant and the allegations were that the induction was illegal. The plaintiff had also pleaded that he had asked his landlord to join defendant no.3 in the previous litigation. The pleadings show that defendant no.3 has specifically pleaded that he was in possession of a part of the disputed premises. The petitioners did not place on record the rejoinder, if any filed to the written statement filed in 2010. The application seeking amendment was filed five years later pleading that

possession has been taken unauthorizedly by defendant no.3. No date on which the possession was taken over was mentioned. It was pleaded that the possession had been taken in March 2015. The plaintiff had not pressed for the stay application, though it came up before the Court in April 2015. The plaintiff did not get any FIR registered nor approached the Court nor filed a complaint and all these facts were noted by the lower Court and the application was rightly dismissed.

I see no infirmity in the findings. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 14, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No