

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

113

CR No.7895 of 2016
Date of decision :26.10.2017

Swaran Singh

...Petitioner

Versus

Parveen Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Gupta, Advocate
for the petitioner.

Mr. Parveen Chauhan, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (Oral)

Defendant-petitioner is in revision petition against order dated 03.10.2016, whereby plaintiff has been permitted to amend the plaint, subject to payment of cost of Rs.10,000/-.

Learned counsel for the petitioner has submitted that originally the suit was filed under Order 6 of the Specific Relief Act seeking restoration of possession on account of forcible dispossession. Now the plaintiff wants to add a relief of declaration which cannot be permitted. He has further submitted that the suit as amended has become time barred.

I have considered the submission made by learned counsel.

It is not in dispute that the present suit was instituted on 29.11.2012. The written statement was filed by the defendant on 27.10.2014 i.e. after a period of almost two years. The Court after considering the pleadings framed issues, which are extracted as under:-

*“Rejoinder to the written statement filed by
defendant No.1, 3, 9 and 11 not filed by the plaintiff.*

In compliance of Section 89 of CPC, parties are asked about the possibility of compromise between them, but they flatly refused and does not agree to refer the case to Mediation Center. From the pleadings of the parties, the following issues are framed as under:-

1. Whether the plaintiff is entitled to decree for recovery of possession of the suit land fully detailed in the head note of the plaint?OPP

2. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the Hon'ble Court?OPD

3. Whether the plaintiff has got no locus standi to file the present suit?OPD

4. Whether the plaintiff has got no cause of action to file the present suit?OPD

5. Whether the suit of the plaintiff is time barred?OPD

6. Whether the suit of the plaintiff is not maintainable in the present form?OPD

7. Whether the plaintiff has not given notice U/S 80 of CPC as the answering defendant is a govt. employee?OPD(9)

8. Whether the suit of the plaintiff is bad for non joinder and misjoinder of necessary parties?OPD

9. Relief.”

Since the defendant had objected to the maintainability of the

suit, plaintiff filed an application for amendment of the plaint. The aforesaid application has been allowed.

In my considered opinion, once the plaintiff had sought declaration, the suit is to be treated as a normal civil suit and not a summary suit under Section 6 of the Specific Relief Act. Even the Court has not proceeded with the trial of the suit as a summary suit. The suit is being tried as a regular suit. Once the suit being tried as a normal suit, the amendment in the plaint is permissible.

Last submission of learned counsel is that the suit has become time barred. In my considered opinion, such plea would be available to the defendant-petitioner at the time of filing the written statement to the amended suit. The defendant-petitioner can request the Court to frame an issue on that Court and adjudicate upon the same.

Taking into consideration the fact that the learned trial Court has exercised its discretion in allowing the amendment, this Court does not find that such exercise of discretion to be perverse and suffering from any material irregularity.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this revision petition is dismissed.

26.10.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No