

Civil Revision No. 767 of 2017(O&M)

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

Civil Revision No. 767 of 2017(O&M)

Date of decision: 2.2.2017

Deepak Kumar

... Petitioner

Vs.

Meenu Kapoor and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Puneet Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition is directed against the order dated 16.12.2016 (Annexure P-7) passed by learned trial court, whereby application of the plaintiff-petitioner, seeking amendment in his plaint of suit for permanent injunction, thereby trying to convert the suit into a suit for possession, was declined.

Heard learned counsel for the petitioner.

It has gone undisputed before this court that petitioner filed a suit for permanent injunction. Defendants-respondents, after having been served in the suit, appeared and filed their contesting written statements. On completion of pleadings of the parties, learned trial court framed appropriate issues on 20.7.2016. Thereafter, vide his application dated 30.8.2016 (Annexure P-5) under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure ('CPC' for short), petitioner-plaintiff sought amendment in

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his plaint, alleging that he has been forcibly dispossessed by the defendants, during the pendency of the suit. In fact, by way of amendment, plaintiff sought to convert his suit for permanent injunction into a suit for possession, which was not permissible in law, as per provisions contained under Order 6 Rule 17.

Further, in spite of the fact that it was made crystal clear by learned trial court, while passing order dated 20.7.2016 disposing of application under Order 39 Rule 1 and 2 CPC, that defendants were claiming their share in the suit property on the basis of two sale deeds of even date 23.12.2010, plaintiff-petitioner has not challenged the validity of those sale deeds even at the time of filing his application under Order 6 Rule 17 CPC. This was the reason that learned trial court, while passing the impugned order, has rightly observed that petitioner was having entirely separate cause of action and his application for amendment cannot be allowed, because that would amount to changing the nature of the suit.

Relevant observations made by learned trial court in para 6 and 7 of its impugned order, which deserve to be noticed here, read as under:-

“Further, it is also provided under order 6 Rule 17 CPC that no amendment should be allowed which will change the entire nature of the suit. In the present case, the plaintiff is seeking the relief of permanent injunction and now, he wants to entirely change the nature of the suit by converting it to a suit for the possession which is against the provisions of under order 6 Rule 17 CPC.

Even otherwise, the incident as narrated by

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the plaintiff in the present application is entirely separate cause of action and the plaintiff is required to pursue the same separately, as per law and he cannot entirely change the nature of the present suit on the basis of the present application. As far as, the case laws cited by the counsel for the plaintiff are concerned, the same would have been applicable in the present case if the present application would have been moved by the plaintiff before framing of issues and commencement of the trial.”

Coming to judgment of this Court in **Piara Singh Vs. Santokh Singh, 1998 (2) RCR (civil) 491**, relied upon by learned counsel for the petitioner, there is no dispute about the observations made and law laid down therein. However, a close perusal of the cited judgment would show that it is of no help to the petitioners, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

During the course of hearing, learned counsel for the petitioner could not substantiate any of his arguments. He also could not point out any patent illegality or perversity in the impugned order passed by learned trial court. In fact, learned trial court was well within its jurisdiction to pass the

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impugned order, which has been found factually correct and legally justified order based on sound reasons and the same deserves to be upheld, for this reason also.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

2.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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