

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

**CR No. 1871 of 2014(O&M)
Date of decision : 21.11.2018**

Anjana Mittal

..... Petitioner

versus

Dinesh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kumar Jain, Advocate for the petitioner.

Mr. Vikas Bahl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate for the respondents.

AMIT RAWAL, J. (ORAL)

The present petition is directed against the impugned order dated 4.3.2014 whereby the application for amendment of the plaint by incorporating the relief of possession in a suit for declaration claiming ownership of the property, had been rejected.

Mr. Amit Kumar Jain, learned counsel appearing for the petitioner submitted that plaintiff along with the suit had submitted an application under Order 40 Rule 1 CPC for appointment of receiver which was partly allowed and modified by the Appellate Court wherein the direction was issued to defendant No.1 to maintain the account of the suit property and deposit half of the income in the Court. Revision petition earlier was not decided but now it has been dismissed. In these circumstances it is necessary to incorporate relief of possession of the suit property along with the mesne profits. The evidence in this regard has

already been led subject to tendering of two documents. The aforementioned application was opposed on the premise that earlier application for amendment of the plaint was filed but no amendment was allowed. Such plea was not permitted to be raised as it would tend to de novo trial which would cause serious prejudice to the defendants

Mr.Vikas Bahl, learned senior counsel assisted by Ms.Balpreet Sidhu, learned counsel appearing for the respondents submitted that when plaintiff is not in actual physical possession of property in dispute, any relief of permanent or mandatory injunction can be observed. He further submits that the proposed amendment is an after thought as application was filed when the case was fixed for final arguments and would change the nature of the suit. The plaintiff has assigned no reason as to why she could not plead the proposed amendment before the commencement of the trial despite exercise of due diligence.

I have heard learned counsel for the parties and appraised the paper book and am of the view that there is force and merit in the arguments of learned counsel for the petitioner as the evidence to be incorporated is just and essential for the adjudication of the suit. Even if the evidence of the plaintiff is closed, the plaintiff should be permitted to bring on record essential evidence in the shape of documents to establish possession though necessary evidence to some extent had already been brought on record. The defendants would be at liberty to take all the possible objections in accordance with law in case necessity arises and raise arguments at the time of final adjudication of the suit. Impugned order thus suffers from infirmity and is hereby set aside. However, this amendment would be subject to costs of Rs. 10,000/-.

Revision stands disposed of.

(AMIT RAWAL)
JUDGE

21.11.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No