

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

Civil Revision No.2087 of 2018.

Decided on:-March 28, 2018.

Kamaljit Kaur and another

.....Petitioners.

Versus

Usha Kansal and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Neeraj Gupta, Advocate
for the petitioners.

HARI PAL VERMA, J.

The petitioners have filed the present civil revision under Article 227 of the Constitution of India for setting aside the order dated 27.02.2018 (Annexure P-4) passed by learned Civil Judge (Junior Division), Kaithal, whereby the application under Order VI Rule 17 read with Section 151 CPC for amendment of plaint filed by the respondent No.1-plaintiff during pendency of the suit, was allowed.

Briefly stated, the respondent No.1-plaintiff had filed a suit for specific performance and permanent injunction as a consequential relief with the averments that defendant No.1 (respondent No.2 herein) had agreed to sell the suit property to the plaintiff for a consideration of Rs.2 lakhs and the defendant No.1 had received Rs.50,000/- as earnest money and executed a receipt in token of receipt of earnest money on 16.03.2006. Defendant No.1 agreed to execute and register the sale deed on 16.05.2006 on receipt of balance sale consideration. The defendant No.1 also agreed to deliver the possession of the suit property at the time of registration of sale deed.

However, on 16.05.2006, when the plaintiff approached the defendant No.1 and offered him to receive the balance sale consideration so as to execute and register the sale deed in her (plaintiff's) favour, the sale deed could not be executed as the concerned department had imposed a ban on registration of sale deeds in the area where the suit property is situated. Since the defendant No.1 had received full and final consideration from the plaintiff, he assured the plaintiff to get the sale deed registered in her favour at a later stage and delivered the possession of suit property to the plaintiff as a part performance of the agreement to sell dated 16.03.2006. A separate writing to the said effect and a receipt in token of receipt of full and final sale consideration was executed by defendant No.1 on 16.05.2006 itself. However, the terms and conditions of the agreement to sell dated 16.03.2006 were allowed to be kept intact. When the plaintiff visited the defendant No.1 to get the sale deed executed, he lingered it on. Thereafter, the plaintiff came to know that defendant No.1 had already transferred the suit property in favour of defendant No.3 (petitioner No.1 herein) vide registered sale deed No.4007/1 dated 14.10.2013. Hence, the suit.

While the suit was pending, the respondent No.1-plaintiff had moved an application under Order VI Rule 17 read with Section 151 CPC seeking amendment in the plaint to the effect that in the month of September, 2017 when the plaintiff along with her husband had gone to Hong Kong, the defendants, by taking undue advantage of the absence of the plaintiff and her husband, illegally trespassed into the suit property and put their unused articles/garbage into the room earlier constructed by the plaintiff in the suit

property, thereby dispossessing the plaintiff from the suit property. Accordingly, the prayer clause has also been sought to be amended.

Reply to the application under Order VI Rule 17 read with Section 151 CPC was filed by defendants No.2 and 3 (petitioners herein) and the averments made in the application were controverted. It was pleaded that the application is totally misconceived, malafide and contrary to the case earlier set up by the plaintiff. The suit is pending since 2013 and thereafter, the issues were framed on 26.05.2014. The case was thereafter fixed for evidence and after availing sufficient opportunities to lead evidence, the plaintiff has filed this application at a much belated stage and in order to harass the petitioner-defendants so as to delay the proceedings. Thus, the application VI Rule 17 read with Section 151 CPC for amendment of plaint is not maintainable.

Vide impugned order dated 27.02.2018, learned civil Court has allowed the application VI Rule 17 read with Section 151 CPC for amendment of plaint filed by the plaintiff (respondent No.1 herein).

It is in these circumstances, the petitioner-defendants No.2 and 3 have filed the present civil revision.

Learned counsel for the petitioners has argued that the application VI Rule 17 read with Section 151 CPC for amendment of plaint has been filed at a much belated stage when the case is at an advance stage of trial. The issues were framed by learned civil Court on 26.05.2014. The plaintiff has availed many opportunities to lead evidence. She was never in possession of the suit land, as pleaded in the application. The petitioners

purchased the suit land from defendant No.1 (respondent No.2 herein) and the plaintiff was never handed over the physical possession of the suit land. The plaintiff is trying to change the facts as the stand now taken that she had constructed a room on the suit land is contrary to her own earlier pleadings in the suit, where no such stand was taken. Therefore, the amendment application was required to be dismissed.

I have heard learned counsel for the petitioners and perused the record.

The provisions of Order VI Rule 17 CPC read as under:

*“17. **Amendment of pleadings.** – The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

In the case in hand, the civil Court has allowed the application seeking amendment of the plaint. In the plaint, which was filed in the year 2013, there is a recital that since 16.05.2006, the plaintiff is in peaceful possession of the suit property. The question as to whether the respondent-plaintiff was delivered the possession on 16.05.2006 by defendant No.1 and since then, she is in possession of the suit property and constructed a room is a matter of evidence to be ascertained during the trial when the parties would

lead their respective evidence. The consistent stand of the petitioners is that the respondent No.1-plaintiff never came into possession of the suit property, whereas the plaintiff has pleaded that she was in possession of the suit property during pendency of the suit. The amendment has been sought to the effect that it is in the absence of the plaintiff, the defendants by taking advantage of her absence from India, illegally dispossessed her. Accordingly, this fact needs to be incorporated by leading evidence and the plaintiff is yet to complete her evidence.

In case the plaintiff is not allowed to amend her plaint at this stage and unless the relief of possession is incorporated in the plaint, she would not be able to get the possession of the suit property. Rather, she will be constrained to file a separate suit for possession, which shall multiply the proceedings. Thus, this Court finds that there is no illegality in the impugned order dated 27.02.2018 passed by learned civil Court.

Accordingly, the impugned order dated 27.02.2018 (Annexure P-4) passed by learned Civil Judge (Junior Division), Kaithal is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

It is made clear that the observations made hereinabove shall not be construed as an expression on the merits of the suit pending adjudication before the trial Court. The trial Court shall decide the suit without having been influenced by any observations made hereinabove.

March 28, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No