

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2544 of 2018 (O&M)
Date of Order: 15.05.2018

Harbans Singh and another

..Petitioners

Versus

Ravinderjit Kaur

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. R.K.Batta, Sr. Advocate, with
Mr. Mandeep K. Saajan, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Plaintiffs-petitioners are in revision petition against the order passed by the learned trial court, dismissing the application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint, so as to include the relief of possession.

Plaintiffs originally filed a suit for declaration and permanent injunction claiming that the plaintiffs are in possession of the property. However, during the pendency of the litigation, in other litigation vide judgment dated 24.05.2017, it was held that the plaintiffs are not in possession. Thereafter, the plaintiffs filed an application for adding the relief of possession.

Learned trial Court has dismissed the application on the ground that the application has been filed after the trial has made substantial progress and the plaintiffs has concluded their evidence. The Court has

held that the plaintiffs failed to exercise due caution. Such application could have been filed immediately when the defendant had taken a stand that they are in possession.

No doubt, the application has been filed when the trial has made substantial progress, however, no substantive amendment in the pleadings are being made. Only relief of possession is sought to be added so as to make the suit maintainable in view of bar provided under Section 34 of the Specific Relief Act. Such amendments should have been allowed by the Court.

Counsel for the plaintiffs-petitioner has already suffered a statement on 21.04.2018 that the plaintiffs do not wish to lead any further evidence. Defendant is in the process of leading her evidence and no prejudice would be caused to her as the defendant would have opportunity to lead her complete evidence.

In view thereof, the order under challenge is set aside and the application for amendment is allowed. If the amended plaint is not already part of the record, plaintiffs would be granted opportunity to file the amended plaint and correspondingly the defendant would be granted opportunity to file amended written statement.

However, there would be no *de-novo* trial as no additional issue is required to be framed. The trial of the case would be proceeded from this stage.

The revision petition is allowed.

May 15, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No