

223

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

**Civil Revision No.4186 of 2016 (O&M)
Date of Decision: 16.05.2018**

TARLOCHAN SINGH

.....Petitioner

Vs

NAGINA & ETC

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Onkar Singh, Advocate
for the petitioner.

Mr. Manish Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has assailed the order dated 18.05.2016 passed by the Civil Judge (Sr. Divn.) Hoshiarpur whereby application filed by him under Order 6 Rule 17 CPC was dismissed.

Brief facts are that a suit for declaration and permanent injunction was filed by the plaintiff-petitioner on the ground that the plaintiff was owner in possession of house marked as 'ABCD'. The factum of gift deed was also pleaded which was executed by defendant No.1 in favour of defendants No.2 and 3 vide which some portion of the house marked by letters 'DEFG'

was gifted in favour of defendants No.2 and 3.

Defendant No.1 while filing the written statement has specifically pleaded that by virtue of aforesaid gift deed, defendants No.2 and 3 were put in possession of the gifted property. The gift deed in question has also been assailed by the petitioner in an independent suit which is statedly pending before the trial Court.

The proposed amendment has to be tested at the threshold of *bona fide* or otherwise. The entire house is situated in 9½ *marlas*. Only a specified portion of the house was made subject matter of the gift. However, the petitioner is proved to be co-sharer in the house. Thus every co-sharer would be deemed to be in possession on every inch of the land till land is partitioned by metes and bounds.

At this stage, even if, gift deed is ignored, the petitioner can establish his title *qua* remaining portion of the house. The proposed amendment is only to the extent of incorporating alternative prayer of possession. The joint possession is inbuilt mechanism in the concept of co-sharership. Even if one of the co-sharer is out of possession the same shall be subject to the partition and he would be deemed to be in possession over every inch of the land.

In my considered opinion, the proposed amendment is

not necessary and *bona fide*, rather the same is aimed to delay the proceedings as the case has already reached at the stage of rebuttal and arguments. No amendment can be allowed after commencement of the trial unless the Court is satisfied that the proposed amendment is necessary for just decision of the case.

This revision petition is accordingly dismissed.

May 16, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No