

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

CR-4470-2016 (O&M)

Date of decision : 22.3.2018

Gurcharan Singh

..... Petitioner

Versus

Baljinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. C.L.Sharma, Advocate for the petitioner.

Mr. Ram Bilas Gupta, Advocate for respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 26.5.2016 (Annexure P-6), passed by learned Additional Civil Judge (Senior Division), Hoshiarpur, vide which application filed under Order VI Ruled 17 read with Section 151 of the Code of Civil Procedure, 1908, for amendment of the plaint filed by the plaintiff-respondent was allowed.

It comes out that plaintiff-respondent had filed a suit for permanent injunction for restraining the defendant-petitioner from interfering into the peaceful possession of the plot in question and also restraining them from destroying the sugarcane crop shown on the said plot. In the plaint, it was claimed that the plaintiff is owner in possession of the land. The land was owned by his mother Smt. Avtar Kaur and inherited by the plaintiff. The said averments were denied in the written statement. Both the parties led their evidence on the lines of their pleadings and when the

case was ripe for arguments, present application for amendment of the plaint was filed, by way of which plaintiff want to delete the averments at the end of *para No. 1 on page No. 2* and wants to plead that Ved Prakash etc., being *Sounjidar* vide writing dated 7.3.1992 transferred the possession of the suit property in favour of Smt. Avtar Kaur-mother of the plaintiff and she remained in possession of the same till her death and her rights were inherited by the plaintiff and his brother Gurmukh after her death. Now the plaintiff is in cultivating possession of the suit property after the death of his mother Smt. Avtar Kaur.

It comes out that learned trial Court while passing the impugned order dated 26.5.2016 (Annexure P-6), noticed that in a suit for injunction, only the possession of the plaintiff is to be seen and the capacity in which he is in possession. It was observed by the learned trial Court that present amendment is necessary for just and proper adjudication of the controversy pending between the parties.

I am of the view that learned trial Court erred in allowing the amendment at the stage of hearing arguments particularly when the controversy could be decided even without considering the amended pleadings. It is a suit for injunction, plaintiff is required to prove his established possession. Even if, the plaintiff failed to prove that he is the owner of the property in dispute but succeed to prove that he is in long established possession, his suit could otherwise succeed. Now, the plaintiff wants to change the stand and state that in place of being the owner, he is not in possession as the land owner but as *Sounjidar* as land was transferred to his mother by *Sounjidar* and was inherited by him along with his brother-

Gurmukh Singh. In this way, he wants to plead his possession in different capacity.

I am of the view that said facts were within the knowledge of the plaintiff when he filed the suit. For the purpose of permanent injunction, the Court is to see as to whether plaintiff is in established possession of the land to the exclusion of the defendant? Therefore, the said amendment is otherwise necessary. It was otherwise filed at a belated stage of arguments, therefore, learned trial Court erred in allowing such amendment.

Learned counsel for respondent relies upon an authority of this Court delivered in 2006 (4) RCR (Civil) 248 titled as Gautam Sarup versus Anand Sarup and others and plead that amendment can be allowed even at the appellate stage. I am of the view that this Court has taken a view that the proposed amendment among others, is unnecessary and, therefore, the same cannot be allowed.

As such, revision petition is allowed and the impugned order dated 26.5.2016 (Annexure P-6), passed by learned Additional Civil Judge (Senior Division), Hoshiarpur is set aside.

It is clarified that the observations made above are strictly for the purpose of disposal of the present revision petition and the same shall not be construed as an expression of opinion on the merits of the case.

Since, the main petition is allowed, the miscellaneous application, pending, if any, stands disposed of.

22.3.2018
preeti

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned	Yes
Whether Reportable:	No