

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 4803-2016 (O&M)
Date of decision: 18.01.2018

Gopi Chand and another

.....Petitioners

versus

Rajesh Kumar and others

.....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Sudhanshu Makkar, Advocate for the petitioners
Mr. G.C. Shahpuri, Advocate for respondent
Nos. 2, 3, 6 to 10, 31, 34, 35, 40, 53 to 55, 47 and 48

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioners/ plaintiffs are aggrieved of the order dated 13.7.2016 (Annexure P4), passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, vide which, their application filed under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

Briefly stated, the present petitioners/ plaintiffs have filed a suit against defendants for permanent injunction, restraining defendant nos. 1 to 57 from interfering in their possession over the disputed property. Suit was instituted on 17.11.2012. It appears that the suit progressed at a snail pace and when the case was fixed for recording evidence of the plaintiffs, plaintiffs filed an application under Order 6 Rule 17 CPC on 1.4.2016 (Annexure P2) i.e. after more than 3 ½ years of the filing of the suit, seeking amendment of the plaint to add following alternative prayer:-

“Or in the alternative a decree for partition of property by metes and bounds and by carving out a separate kurra regarding share of plaintiffs in the above mentioned Khasra Numbers.”

It was stated that amendment is of formal nature. The said amendment was declined by the Trial Court.

After hearing learned counsel for the parties, I am of the view that the amendment was rightly declined. It was a simple suit for permanent injunction on the basis of possession and even if there is objection from the defendant, the injunction is to be granted on the basis of the lawful long established possession. The application was filed after the trial had already commenced. All the facts were within the knowledge of the petitioners. Further, for the suit for partition, the petitioners require to make certain averments regarding ownership and also produce the documents of title, which averments are not sought to be made in this application for amendment of plaint. The only prayer is sought to be added.

In these circumstances, I am of the view that the trial Court rightly exercised the discretion in not allowing the amendment.

Learned counsel for the petitioners has referred to the judgment of the Apex Court delivered in a case titled as Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481 and has pressed that the change in nature of relief claimed shall not be considered as change in the nature of the suit and that power of amendment should be exercised in the larger interest of doing full and complete justice between the parties. Even if, these parameters are applied, even it is simple injunction suit on the basis of long established possession, whereas, the partition is to be allowed

on the basis of the title and shares therein. In the present case, the application was filed after 3 ½ years to put the clock back and start a new trial with new pleadings. Moreover necessary pleadings are also required in the plaint which are not sought to be made. Therefore, the said authority is not attracted in the present case.

The present revision petition stands dismissed.

18.01.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned: Yes

Whether Reportable: No