

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

Civil Revision No.542 of 2018
Date of decision: 25.01.2018

CHARANJIT SINGH

... Petitioner

versus

KAPOOR SINGH AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sachin Gupta Ladwa, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 16.12.2017 (Annexure P-5) passed by Civil Judge (Sr. Division), Kurukshetra, whereby the application filed by the petitioner-plaintiff under Order 6 Rule 17 CPC seeking amendment in the suit was dismissed.

Briefly stated, the petitioner-plaintiff (hereinafter referred to as “the plaintiff”) has filed a suit for declaration to the effect that the plaintiff is owner in possession of the suit property, with a consequential relief of permanent injunction restraining the respondent-defendants (hereinafter referred to as “the defendants”) from alienating the suit

property. As per the plaint, Joginder Singh (father of the petitioner-

plaintiff and respondents-defendants No.1 & 5, namely, Kapoor Singh and Sadhu Singh) was in possession of house along with other property. Joginder Singh had executed a Will in favour of plaintiff which was registered on 03.06.1993. As per the Will, the house in question was to be given to the plaintiff. Joginder Singh died on 03.10.1995. Respondent-defendant No.5, namely, Sadhu Singh filed a suit against respondent-defendants No.1 to 4 (i.e. Kapoor Singh etc.) and the plaintiff moved an application for impleading him as a party in the said suit, but his application was not allowed. However, vide order dated 19.08.2009 passed by this Court, the plaintiff was allowed to file an independent suit. The defendants are claiming their ownership and possession, although they have no right, title or interest in the suit property.

Respondents-defendants No.1 to 3 filed their written statement wherein they have taken preliminary objection that the suit filed by the plaintiff is not maintainable in the present form, as the plaintiff is neither owner nor in possession of the suit property. A mere suit for declaration does not lie and, therefore, the same is liable to be dismissed.

Be that as it may, while the suit was pending, the plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment of plaint. As per the application, the plaintiff has sought amendment in the plaint to the extent that in the heading of the plaint “suit for declaration with consequential relief of possession and permanent injunction” is to be substituted. After paragraph 7 of the plaint, a new paragraph 7-A is sought to be added, which reads as under:-

“7-A That the plaintiff has been visiting the house in question and also residing in the house in question. But due

to the fact that plaintiff was in the Govt. service so he had to reside at different places. However plaintiff had been visiting the house described in para no.1 of the plaint. The plaintiff has been visiting as Sardar Joginder Singh, grand-father of the plaintiff executed a Will in his favour and old personal articles of the grand-father and the plaintiff were lying in the house. The defendants are not allowing the plaintiff to enter the house after the statement of DW1 was recorded. The defendants have got no right to obstruct the plaintiff from entering the house in question.”

Similarly in paragraph No.11 of the plaint, the amendment is sought to the effect that after the words “Court fee and jurisdiction” is “Rs.5 lac (Rs.5,00,000/-) market value of the house and the court fee stamp of Rs.31,000/- is being affixed on the plaint” are to be substituted. In the prayer clause, the petitioner has sought amendment that after the words “in the site plan with a consequential relief”, the words “decree for possession of the house” are to be inserted before the words of “permanent injunction”.

Learned counsel for the petitioner-plaintiff has argued that the learned trial Court has dismissed the application observing therein that the testimony of the plaintiff itself shows that he is out of possession and, therefore, the plea of the plaintiff that he has been obstructed/ousted by the defendants, after the testimony of DW1, is falsified in view of the testimony of the plaintiff himself. He has further argued that the amendment sought to be incorporated in the plaint is very necessary for the just decision of the case. The civil court has merely relied upon the contentions raised by the defendants without adhering to the mandatory provisions. The trial Court has passed an unrealistic order ignoring the judicial precedents and dismissed the application despite the fact that the

same was filed without any delay.

I have heard learned counsel for the petitioner and perused the paper book.

The plaintiff has filed a suit for declaration with consequential relief of permanent injunction. He is seeking declaration regarding ownership. The plaintiff has claimed that he has been residing in the house in question prior to filing of the suit. The plaintiff was in Government service and had to reside at different places in connection with his job, but despite his posting at different places, he continued visiting the house in question. However, after recording statement of DW-1 Balwant Singh, the defendants started obstructing the plaintiff to enter in the house in question and therefore, the plaintiff wants to seek declaration for possession along with other reliefs, as mentioned in the plaint. However, in the written statement, the defendants have taken a specific preliminary objection that the suit in the present form is not maintainable and the plaintiff is neither owner nor in possession of the suit property. Though the plaintiff has claimed to be in possession of the house in dispute, but at the time of recording his testimony on 06.08.2016, it could not be established that he was in possession of the house in dispute, as the plaintiff failed to produce any ration card in respect of the house in question. He could not even remember till which year his ration card relating to Village Dabkhera continued. No electricity bill was produced. In this manner, the plaintiff has failed to establish his possession over the house in question. Thus, this Court finds that the application so filed by the plaintiff for amendment of the suit has rightly been dismissed by the Court below.

Therefore, there is no illegality in the impugned order dated 16.12.2017 (Annexure P-5) passed by Civil Judge (Sr. Division), Kurukshetra

Accordingly, the present revision petition is dismissed.

However, it is made clear that the observations made hereinabove shall not construe any expression on the merits of the case and the main case shall be decided in accordance with law.

January 25, 2018
sanjeev/AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No