

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

Civil Revision No.6331-2018

Date of Decision:08.10.2018

Raghunandan

..... Petitioner

Vs.

Yogdutt and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Rakesh Dhiman, Advocate
for the petitioner.

Mr.Harkesh Manuja, Advocate,
for respondent no.1.

AMOL RATTAN SINGH, J. (Oral)

Pursuant to the order dated 01.10.2018, fresh *dasti* notice having been issued to respondent no.2, with liberty to serve her through her counsel regularly appearing for her before the trial Court, the report has been received to the effect that service was duly effected upon her through her counsel.

However, no one has put in appearance on her behalf today. Consequently, she is proceeded against *ex parte*.

The petitioner herein challenges the order of the trial Court dated 16.08.2018. Vide the impugned order, the trial Court while allowing the amendment in the prayer clause to the extent of permitting the petitioner/plaintiff to add the prayer of an alternate relief of recovery of the earnest money, rejected the prayer with regard to amendment in one line of paragraph 15 of the plaint. The said amendment is to the effect that instead of the words, “mutation of *dholidar*”, the words, “mutation of ownership”, are sought to be substituted.

Learned counsel for the petitioner on merits would be correct in his contention that the entire nature of the possession of the respondents over the suit land stands changed, in view of the fact that he has been declared to be the owner thereof as per the order of the competent authority (Assistant Collector, Ist Grade), (Annexure P-8, dated 30.12.2013), with a mutation entry in that regard also made on April 28, 2014.

It is not in dispute that an amendment earlier sought by the petitioner seeking to convert the suit from being one seeking only a prohibitory injunction, to one seeking specific performance of a contract (contended to have been entered into between the parties though wholly denied by the respondents), was allowed, though that was at the initial stage of the trial itself.

Undoubtedly, the amendment allowed would imply a change in the status of possession of the respondents over the suit land, from being in such possession in the capacity of *dholidars*, to one of owners; however, with no oral evidence to be led as has been specifically stated by learned counsel for the petitioner before this Court, and the respondents also not having disclosed in their written statement that they had infact become owners of the suit property (though it is contended that it was so after the suit was filed), I see no ground to not allow this petition.

Undoubtedly, the application has been filed at the fag end of the trial and therefore actually the proviso to Order VI Rule 17 of the CPC may have come in the way of the petitioner, but with the amendment in the prayer clause not having been challenged by the respondents and the amendment now sought being only one single line based on revenue record, and very importantly, the factum of the respondents having become owners

of the suit property not having been disclosed by them, this petition deserves to be allowed in my opinion.

Consequently, the petition is allowed, with the impugned order set aside and the petitioner permitted to amend the single line that he seeks to amend in paragraph 15, to the effect that instead of the words “mutation of *dholidar*”, “mutation of ownership” would be substituted, with the mutation entry in that regard to be also exhibited.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

October 08, 2018.

dharamvir/dinesh

Whether speaking/reasoned : YES

Whether Reportable : YES