

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 7553-2016 (O&M)
Date of decision: 19.02.2018

Umrao

.....Petitioner

versus

Om Parkash @ Omi

.....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Manoj Kumar Sood, Advocate for the petitioner
Mr. Amit Gupta, Advocate for the respondents

- 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)

Heard.

Impugned in the present revision is the order dated 25.10.2016, passed by learned Civil Judge (Junior Division), Faridabad, vide which, application filed under Order VI Rule 17 CPC 1908 for amendment of the plaint was dismissed.

It comes out that suit for possession was pending in which evidence of the parties was recorded and suit was almost mature when the present application for amendment of the plaint was filed by the plaintiff to convert the suit for injunction into the suit for possession, stating that in execution of 3rd party, possession has been taken from him. It is further stated that the present applicant has now filed objection petition under Order XXI Rule 97 CPC read with Section 151 CPC 1908. The said execution was dismissed by the Executing Court. Now, this Court is

informed that ESA against the said order is also dismissed. The trial Court has taken a view that it will start de novo trial.

After hearing learned counsel for the parties, I am of the view that the trial Court was justified in dismissing the application. In a suit for permanent injunction, a decree is to be passed only to the extent that the plaintiff is not to be dispossessed except in due course of law. If in the execution, due process of law has been adopted and possession has been taken from him, the plaintiff has a right to seek legal remedy, as permissible under law. Therefore, the trial Court was justified in not converting the suit for injunction into the suit for possession which is a separate and distinct remedy, in view of the order passed in the execution proceedings.

It being so, there is no illegality or infirmity in the impugned order. However, the plaintiff is always at liberty to seek appropriate remedy before the appropriate Court in accordance with law. He shall also be permitted to withdraw the suit, if he so desires, to seek such remedy.

The present revision petition stands dismissed accordingly.

19.02.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No