

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

Civil Revision No.9065 of 2017.
Decided on:-January 17, 2018.

Chaman Lal.

.....Petitioner.

Versus

Bagga @ Bagga Ram and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Namit Gautam, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present civil revision petition under Article 227 of the Constitution of India impugning the order dated 17.03.2017 (Annexure P-7) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application filed by the petitioner-plaintiff under Order VI Rule 17 read with Section 151 CPC seeking amendment of the plaint, was dismissed.

Briefly stated, the petitioner-plaintiff had filed a suit for permanent injunction restraining the respondent-defendants from interfering in the peaceful possession of the plaintiff over the suit property measuring 5½ Marlas shown in the site plan attached with the suit. Along with the suit, the plaintiff had filed an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC. Vide order dated 02.05.2016, learned civil Court had come to the conclusion that the respondent-defendant No.1 is in lawful possession of the property measuring 2½ Marlas out of the total suit property measuring

5½ Marlas. Accordingly, the parties were directed to maintain status quo till final decision of the suit with regard to possession over the suit property measuring 5½ Marlas and the plaintiff was held in possession of property measuring 3 Marlas, whereas the respondent-defendant No.1 was found in possession of property measuring 2½ Marlas.

While the aforesaid suit was pending, the petitioner-plaintiff had filed an application under Order VI Rule 17 read with Section 151 CPC for amendment of the plaint with the plea that during the pendency of the suit, respondent-defendant No.1 in connivance with respondent-defendant No.2 had taken forcible possession of a part of the suit property and raised construction over that part. Therefore, the plaintiff prayed to amend the pleadings by inserting relief of mandatory injunction in paragraph Nos.6 and 7 of the plaint.

Reply to the said application was filed by the respondent-defendants, wherein it has been submitted that the plaintiff was aware of the possession of respondent-defendant No.1 and the construction on the part of the suit property since the very day of filing of the suit, but he has intentionally concealed these facts and filed the present suit with false facts. It has been pleaded that respondent No.1 is in lawful possession of the suit property measuring 2½ Marlas, as shown in green colour in the site plan attached with the written statement, on which the construction was raised.

Vide order dated 17.02.2017, learned civil Court has dismissed the application seeking amendment of the plaint.

Learned counsel for the petitioner-plaintiff has argued that the findings recorded by the civil Court are based on conjectures and surmises and wrong reasons have been assumed. The civil Court has not taken into consideration the fact that the amendment sought by the petitioner is relevant to decide the real controversy between the parties. It is after filing of the suit, respondent No.1 has taken forcible possession, which necessitated the petitioner to file the instant application seeking amendment of the plaint and in case the amendment is not allowed, the petitioner shall suffer an irreparable loss. On the other hand, the amendment, if allowed, is not going to change the nature of the suit as it has already come on record that respondent-defendant No.1 is in possession of 2½ Marlas of the suit property, although it is illegal in nature and the petitioner being real owner of the suit property is entitled to recover the possession of the same.

I have heard learned counsel for the petitioner-plaintiff.

The application under Order XXXIX Rules 1 and 2 read with Section 151 CPC was disposed of by the civil Court vide order dated 02.05.2016, wherein it was held that the plaintiff is in possession of only 3 Marlas, whereas the defendant No.1 is in possession of 2½ Marlas out of total suit property measuring 5½ Marlas. Therefore, the possession of the defendant No.1 on the suit property was considered by the civil Court at the time of deciding the said application.

Interestingly, it is only after passing of the order dated 02.05.2016 by the civil Court, the petitioner-plaintiff has filed the present application under Order VI Rule 17 read with Section 151 CPC seeking

amendment of the plaint. However, perusal of the order dated 02.05.2016 passed by the civil Court reveals that the respondent-defendant No.1 is in lawful possession of the property measuring 2½ Marlas, whereas plaintiff was held to be in possession of 3 Marlas out of the total suit property measuring 5½ Marlas. The parties were also directed to maintain status quo till final decision of the suit with regard to possession over the suit property.

In case the respondent-defendant No.1 has dispossessed the petitioner-plaintiff during pendency of the suit, despite there being an order passed by the civil Court on 02.05.2016, the petitioner-plaintiff has an appropriate remedy, but has failed to avail the same. Therefore, the plea of the petitioner that during pendency of the suit, he has been dispossessed by respondent-defendant qua part of the suit property measuring 2½ Marlas, cannot be accepted. Moreover, this fact has been admitted by the petitioner in the suit at an initial stage and, therefore, in case the present amendment is allowed, it would lead to withdrawal of the earlier admission made by the petitioner. Thus, this Court does not find any illegality or irregularity in the impugned order dated 17.03.2017 passed by the civil Court.

Accordingly, the impugned order dated 17.03.2017 passed by learned Civil Judge (Junior Division), Ludhiana is affirmed and the present civil revision petition, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

January 17, 2018

Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No