

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

CR No.2169 of 2018

Date of Decision:05.09.2019

NIRMAL KAUR

...Petitioner

Versus

GURDIP SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Rimjhim Mahajan, Advocate for
Mr. Sanjeev Pandit, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 05.02.2018 passed by the Civil Judge (Junior Division), Dasuya (for short-the Trial Court) through which an application filed by the petitioner under Order 6 Rule 17 CPC seeking therein to amend her plaint has been dismissed.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition are in the year 2015, the petitioner filed a suit seeking therein to restrain the respondent from interfering with her peaceful possession of the property which was detailed and described in the head-note of the plaint (for short-the suit property). Along with her suit an application under Order 39 Rule 1 and 2 CPC for interim stay was also

filed.

On being put to notice, the respondent, who was the sole defendant in the suit, appeared before the Trial Court and disputed the petitioner's claim. It was *inter alia* submitted that the suit property was earlier owned by Smt. Rao, who on 17.08.2009, through a written document, had sold the same to the respondent for valuable consideration and from that day onwards it was the respondent who was in possession of the suit property. It was further submitted that the respondent had also got an electric connection installed in the suit property and the electricity charges being generated from such connection was being paid by him. The site plan attached by the petitioner with her plaint was disputed and a reply was also filed to the application filed by the petitioner under Order 39 Rules 1 and 2 CPC.

On 19.02.2016, the petitioner's application for stay was dismissed by the Trial Court and on 09.05.2016, her appeal against the said order was also dismissed by the Additional District Judge, Hoshiarpur (for short-the Appellate Court). While deciding the petitioner's stay application, both the Trial Court and the Appellate Court found the respondent to be in possession of the suit property.

Thereafter to prove her possession over the suit property, the petitioner was granted several opportunities by the Trial Court but no evidence was led by her. Instead, she filed an application under Order 6 Rule 17 CPC through which the petitioner sought to convert her suit for permanent injunction to a suit for possession. The application was dismissed by the Trial Court on the ground that the amendment sought by the

petitioner was vague and that it would change the nature of the suit. Such order is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

In year 2015, the petitioner filed a suit for permanent injunction seeking therein to restrain the respondent from interfering in her possession of her suit property. Through a written statement, the respondent denied the petitioner's possession. He further submitted that on 17.08.2009 the suit property had been sold by its erstwhile owner to the respondent and from that date onwards it was he who was in possession of the suit property. He had further submitted that he had also got an electric connection installed in the suit property and was regularly paying the electricity bills.

On 19.02.2016, after holding that it was the respondent who was in possession over the suit property, the Trial Court dismissed the petitioner's application filed by her under Order 39 Rules 1 and 2 CPC. The petitioner challenged the order of the Trial Court but the Appellate Court after affirming the finding of fact returned by the Trial Court with regard to the respondent being in possession of the suit property, dismissed her appeal.

Thereafter, in spite of grant of numerous opportunities, the petitioner failed to produce any evidence to prove her possession over the suit property. Instead after 2½ years of filing of her suit and about 1½ years of dismissal of her appeal filed by her against the dismissal of her application filed by her under Order 39 Rules 1 and 2 CPC, an application was filed by the petitioners under Order 6 Rule 17 CPC seeking therein to

convert her injunction suit to a suit for possession. The application filed by the petitioner in its entirety reads as under:-

“1. That above noted suit is pending in the Hon'ble Court and same is filed for today.

2. That in the absence of the plaintiff, defendant during the pendency of suit, forcibly and illegally taken the possession of the suit property in dispute.

3. That due to changed circumstances the plaintiff has no other remedy to except the amend the plaint as under:-

Insert the word, “suit for possession in the head note of the plaint as well as in the prayer.”

4. That the purpose amendment will not change the nature, prejudice the right of the parties in any manner, rather it will curtail the multiplicity of the proceedings.

Therefore, it is prayed and requested that the Hon'ble Court be pleased to allow the plaintiff to amend the plaint as stated in the above para of the application, in the interest of justice.”

A perusal of the petitioner's amendment application does not disclose any details with regard to the date and the manner as to how the petitioner was dispossessed from the suit property. Further, the only amendment she seeks to make is to insert the words-“Suit for possession” in the head-note of the plaint as well as the prayer clause. No declaration with regard to ownership of the suit property has been sought. The sought amendment is also found to be absolutely vague especially when no amendment is even sought to be made in the body of the plaint to

incorporate therein any pleading with regard to the petitioner's alleged dispossession. In the absence of such pleadings the amendment sought by the petitioner, even if allowed, would prove futile. Further, the amendment sought by the petitioner is a complete somersault from the prayer made by the petitioner in the suit originally filed by her.

Dismissed.

No costs.

September 05, 2019

(DEEPAK SIBAL)

JUDGE

Jyoti-1 Whether speaking/reasoned Yes/No Whether Reportable Yes/No