

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

221/A

CR No.7430 of 2017(O&M)

Date of Decision: May 06, 2019.

Swinder Singh and another

.....Petitioner(s)

versus

Sikandarpal Singh and others

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH

Present: Mr.Vipin Mahajan, Advocate
for the petitioner(s).

Mr.G.S. Sirphikhi, Advocate
for respondent Nos. 1 & 2.

RAJ MOHAN SINGH, J. (Oral)

1. The petitioner has challenged the order dated 14.09.2017 passed by Civil Judge (Jr. Division), Batala vide which the application filed by the plaintiffs/petitioners under Order 6 Rule 17 CPC for amendment of plaint was rejected.

2. Plaintiffs filed a suit for declaration to the effect that plaintiffs have become owners in possession of the suit land and the order dated 21.10.2014 passed by SDM-Collector was illegal. Permanent injunction was also sought restraining defendants No.1 and 2 from interfering in the possession of the plaintiff over the suit

property.

3. In a suit for declaration, the plaintiffs pleaded the possession over the suit property. However, this fact was denied by the defendants with reference to warrants of possession vide which possession was delivered to the defendants. In the replication filed by the plaintiffs, they again reiterated the stand taken by them in the plaint. Admittedly, after framing of issues, the trial has not commenced so far. The proposed amendment is only to the effect that in case plaintiffs are not found to be in possession of the suit property then, a decree for possession be passed in their favour. On the date of filing of the application, the relief qua the possession has not become time barred. It is a settled principle of law that the amendment in pleadings is to prevent multiplicity of litigation. Relief of possession sought to be incorporated is not time barred at the time of filing of application for amendment of the plaint.

4. Order 6 Rule 17 CPC is in two parts. The first part is discretionary and leaves to the Court to order amendment in the pleadings. The second part is imperative and obligates the Court to allow all amendments, which are necessary for just decision of the case. The amendments should not be unjust and should not result in prejudice to the opposite party, which cannot be compensated in terms of cost. The object of the Rule is that the Court must try the merits of the case and allow all *bona fide* amendments which are necessary for determination of real controversy between the parties.

Reference can be made to ***Ramchandra Sakharam Mahajan Vs.***

Damodar Trimbak Tanksale (Dead) and Ors. (2007) 6 SCC 737
and ***Rajesh Kumar Aggarwal Vs. K.K. Modi, AIR 2006 SC 1647.***
Reference can also be made to ***Venkataraja and others Vs. Vidyane Doureradjaperumal (d) Thri, LRs and others, 2013(3) RCR (Civil)176.***

5. The proviso to Rule to some extent curtails absolute discretion of the Court. The object of the Rule is that Court should be satisfied on merits. The plaintiffs have prayed for amendment of the plaint by taking alternative plea of possession. The power to allow amendment is wide enough to be exercised in the interest of justice, as in the present case, the trial has not commenced so far.

6. At the time of the filing of the revision petition, the trial has not commenced. At this stage, the power of amendments in the plaint can be exercised in the larger and complete justice to the parties so as to subserve accord of justice and prevent further litigation. Reference can be made to ***Abdul Rehman and another Vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481***

7. In view of the facts and circumstances of the case, it can be noticed that Rule of the Amendment is essentially a rule of justice, equity and conscience. It can be exercised in the given circumstances so as to allow the plaintiffs to avail alternative plea of possession. Procedural hurdles ought not to impede cause of justice in dispensation mechanism.

8. In view of the above, I deem it appropriate to accept the revision petition. The impugned order is set aside subject to payment

of costs of Rs.15,000/- to be paid to the defendants. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

9. Normal consequences to follow

May 06, 2019

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**[RAJ MOHAN SINGH]
JUDGE**

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes/No