

CR-7668-2017 (O&M)

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

CR-7668-2017 (O&M)

Date of decision : 29.04.2019

Joy Malik and another

... Petitioners

Versus

Prem Rani (deceased) through LR's and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Deepak Girotra, Advocate
for the petitioners.

Ms. Rishma Verma, Advocate
for respondent Nos.1 to 3.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application under Order 6 Rule 17 of CPC seeking amendment of the plaint, has been allowed.

The plaintiff sought the amendment of the suit claiming separate possession by way of partition by metes and bounds to the extent of 1/4th share in a joint property with a prayer of preliminary decree of injunction. It was alleged that the plaintiffs had earlier filed the suit for declaration to be co-owners/co-sharers in possession of the joint family property No.E.K. 230, Phagwara Gate, Jalandhar by challenging the sale deeds dated 11.06.2004 & 30.12.2004 being illegal, null and void with consequential relief of permanent injunction restraining the defendant

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Nos.10 to 12 or their agents/attorneys, servants, to take possession of the suit property.

Mr. Girotra, learned counsel appearing on behalf of the petitioners-defendants submitted that the suit was filed in the year 2007 with the aforementioned relief and the plaintiffs had already sought two amendments and this is the third amendment. The Court below had erroneously allowed the amendment, though the suit is at the stage of plaintiffs' evidence. The alleged costs of ₹10,000/- was erroneously taken by the clerk, which was sought to be deposited by way of application dated 29.09.2017 and the Court below, on the same date, ordered for deposit in District Legal Service Authority, Jalandhar, therefore, it will not be a bar for challenging the impugned order, by way of revision petition. The amendment tantamounts to change the nature of the suit and cannot be permitted to continue as the suit of 2007 is being delayed for more than ten years.

Ms. Verma, learned counsel for respondent Nos.1 to 3, submitted that pith and substance of the suit is seeking declaration as co-sharers by challenging the sale deeds. Separate possession is *sine qua non*. It does not tantamount to taking away the right of the petitioners-defendants or cause any prejudice, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

On perusal of the main suit, the headnote and prayer clause of the application, the amendment for preliminary decree by way of separate possession is essential and necessary for adjudication of the suit. The Court

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below, while considering all the facts, had imposed costs of ₹10,000/-, which was erroneously accepted by the Clerk and had been deposited in DLSA, Jalandhar. I am of the view that objection qua maintainability of the revision petition must fail, but the amendment sought is totally essential and necessary for the adjudication of the suit as the parties do not want to keep the possession joint while seeking determination of their shares.

Keeping in view the aforementioned facts and circumstances, the impugned order, under challenge, cannot be said to be suffering from infirmity and illegality and no ground is made out for interference. Accordingly, the present revision petition is dismissed.

However, the trial Court is directed to expedite the trial of the suit.

29.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**