

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

**SAO No. 96 of 2015 (O&M)
Date of Decision: January 11, 2019**

Geeta Devi and another

.....APPELLANT(s).

VERSUS

Lal Chand and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Atul Yadav, Advocate
for the appellants.

Mr. Chanderhas Yadav, Advocate
for respondent No.1.

Service of remaining respondents dispensed with vide order
dated 11.08.2016.

SURINDER GUPTA, J.(Oral)

Heard.

Plaintiff-Lal Chand/respondent No.1 filed suit seeking possession of one room in the suit property, which was dismissed. He went in appeal before the Ist Appellate Court and the learned Additional District Judge, Rewari without setting aside the findings recorded by the trial Court remanded the case on the ground that during the pendency of the suit, it has been asserted that the possession of entire house has been taken by contesting respondent Nos.6 and 7, as such the appellant has liberty to amend the plaint which will help the Court to reach a reasonable conclusion to decide the dispute for all the times to come.

The relevant observations of learned Additional District Judge, Rewari in para 9 of the judgment are reproduced as follows:-

9. *After hearing the parties and going through the documents on record, this court is of the view that the appellant has brought the suit for possession of one room alone out of residential house comprising 4-5 rooms, but during pendency of the suit he has gone asserting that entire house has been forcibly & illegally occupied by respondents No. 6 & 7. The appellant has, however, not only failed to specify the date when the defendants have taken the possession of the remaining rooms nor he amended his plaint to seek a relief qua the entire house instead of the prayer of recovery of possession of one room only as was made initially in the plaint. In such a situation, the better course left is to remand the case with a liberty to the appellant-plaintiff to make appropriate representation before learned trial court seeking amendment in the plaint as it is not only in the larger interest of the parties. It will not only save the parties from the multiplicity of the litigation but will help in arriving at a just & reasonable conclusion to bury the dispute for all the time to come.*

It is apparent that plaintiff had not moved any application seeking amendment of the plaint. The Ist Appellate Court has tried to set up the case for plaintiff which was not pleaded by him. No direction can be given to a party to amend its plaint and to the trial Court to hear case afresh after giving opportunities to the plaintiff to amend the plaint. The plaintiff/respondent No. 1 could otherwise move an application before the Ist Appellate Court seeking amendment of the plaint, if he so required, which could be decided on merits, in accordance with law. The order to

remand the case for fresh trial on this sole ground is not legally tenable.

This appeal has merits and the same is accepted. The parties are directed to appear before the learned Additional District Judge/Successor Court, Rewari on 02.02.2019. The Court will take the appeal on board and proceed further to decide the same on merits.

January 11, 2019.
Jyoti-II

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>