

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

(272)

**CR-2349-2018 (O&M)
Date of Decision: 19.12.2022**

Naveen Sharma & anr.

...Petitioners

Versus

Kamlesh Sharma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Namit Khurana, Advocate, for the petitioners.

Mr. Karan Singh, Advocate, for respondents No.1 and 3.

HARKESH MANUJA, J.(ORAL)

By way of present revision petition, challenge has been made to an order dated 18.12.2017 passed by the Court of learned Civil Judge (Jr. Divn.), Yamuna Nagar, whereby an application filed at the instance of petitioners/plaintiffs seeking amendment of plaint has been dismissed.

Brief facts of the case are that the petitioners/plaintiffs filed a suit for declaration claiming themselves to be the owner/co-sharer in the suit property. Respondents/defendants filed their written statement denying the case set up by the petitioners/plaintiffs in the plaint. During pendency of the suit, the petitioners/plaintiffs moved an application under Order 6 Rule 17 CPC with a prayer for seeking amendment of plaint so as to incorporate the relief of separate possession by way of partition. The aforesaid application was opposed by the respondents/defendants. The trial Court vide Order dated 18.12.2017, declined the prayer made at the instance of petitioners/plaintiffs. It is the aforesaid order dated 18.12.2017 which has been impugned in the present revision petition.

It has been contended on behalf of the petitioners/plaintiffs

that the prayer now sought to be incorporated qua the relief of separate possession by way of partition is in fact a consequential prayer in furtherance of the main relief already prayed for in the suit and as such the same would not even change the cause of action being based on the same facts.

On the other hand, learned counsel for the respondents/defendants on having instructions from respondents No.2 and 3 who are present in Court, very fairly submits that they shall have no objection in case, the prayer made at the instance of petitioners/plaintiffs seeking amendment of plaint so as to incorporate the relief of separate possession by way of partition is allowed and a direction is issued to the Court below to decide the suit in an expeditious manner by permitting the respondents to file their amended written statement taking all pleas available to them as per law.

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

A perusal of the plaint as well as the amendment as prayed for shows that the same is based on the facts already pleaded in the original plaint and even does not render any change of cause of action. The amendment sought to be incorporated in the plaint would even help the Court to decide the dispute between the parties in a complete and effective manner. Still further, the fair stand taken before this Court, at the instance of respondents is highly appreciated.

In view of the discussion made hereinabove, the present revision petition is allowed and the impugned order dated 18.12.2017 is ordered to be set aside thereby permitting the petitioners to carry out the amendment of plaint as prayed for. Considering the facts that the suit is pending before the trial Court for the past more than 5 years now, it would be appreciated in case, the trial Court makes an endeavor

to decide the same finally, within a period of 1 year from today. It is further made clear that the respondents/defendants shall be at liberty to file their written statement to be amended plaint by taking all pleas available to them, in accordance with law.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

19.12.2022
anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No