

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.6104 of 2016

Date of Decision : 29.11.2022

Lekh Ram and Others

....Petitioners

VERSUS

Rajkali and Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Yadav, Advocate for the petitioners.

Mr. J.S. Ghuman, Advocate for respondent nos.1, 3 and 4.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging order dated 10.08.2016 (Annexure P-11) vide which the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') for amendment of the plaint has been dismissed.

Learned counsel for the plaintiff-petitioners would contend that forcible possession of the suit land has been taken from the plaintiff-petitioners by the defendant-respondents on 24.07.2016. The plaintiff-petitioners filed an application under Order XXXIX Rule 2A CPC which is pending and no decision has been taken on the same. It is further the contention that police complaints were made on 23.07.2016 requesting for police protection since the defendant-respondents were alleged to have been threatening to take possession of the suit land from the plaintiff-petitioners. Learned counsel for the plaintiff-petitioners would further contend that the reasoning given by the Trial Court while dismissing the application is that the act and conduct of the party shows that they are not in a hurry to get back their possession. It is further the contention that in fact the Trial Court is

recognizing the fact that possession of the plaintiff-petitioners has been taken from them during the pendency of the suit. In view thereof, the amendment of the plaint ought to have been allowed.

Per contra learned counsel for respondent nos.1, 3 and 4 has contended that the application has rightly been rejected inasmuch as the application has been filed only to fill in the lacuna in the case as set up by the plaintiff-petitioners. It is further the contention that the entire story has been set up in a pre-planned manner inasmuch as on 23.07.2016 an application was filed for protection and, thereafter, it is alleged that on 24.07.2016 the possession was taken by the defendant-respondents. It is further contended that allowing the application would change the nature of the suit.

I have heard learned counsel for the parties.

In the present case the impugned order dated 10.08.2016 is bereft of any reasoning as to why the application under Order VI Rule 17 CPC has been dismissed except that it has been noticed that the act and conduct of the party shows that they are not in a hurry to get their possession back. The same cannot be a ground for dismissing the application. In the present case the plaintiff-petitioners are alleging that possession has been taken by the defendant-respondents during the pendency of the suit on 24.07.2016. Immediately thereafter, on 03.08.2016, an application for amendment of the plaint was filed. The Trial Court is expected to deal with the application on merits, which has not been done in the present case.

In view thereof, the impugned order dated 10.08.2016 is set aside. The Trial Court is directed to decide the application under Order VI

Rule 17 CPC afresh, on merits. Any observation made in this order shall not be treated as an expression of opinion of this Court on merits of the case.

The present revision petition stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

29.11.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO