

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

CR-3818-2019(O&M)

Date of decision:-30.11.2022

Dharambir and others

...Petitioners

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rakesh Nehra, Sr.Advocate with
Mr.Anil K.Sokal, Advocate for the petitioners.

Mr.Vivek Khatri, Advocate
for respondent No.1.

H.S. MADAAN, J.(ORAL)

1. Briefly stated, facts of the case are that plaintiff Pawan Kumar had filed a suit against Parshuram @ Parse (since dead represented through his LRs) as well as Dharambir, Jasbir, Agnivesh and Sanjay, all sons of Ishwar Singh, residents of village Luksar, Tehsil Bahadurgarh, District Jhajjar, seeking specific performance of agreement to sell dated 28.3.2019 with a consequential relief of declaration.

2. On getting notice, the defendants appeared and filed written statements contesting the suit. The following issues were framed:

1. Whether the defendant no.1 had entered into an agreement to sell

with the plaintiff on 28.3.2009 to sell 4 kanals of land for a consideration of Rs.14,50,000/- and received a part of consideration amounting to Rs.2,00,000/- as alleged? OPP.

- 2. Whether the plaintiff had already been ready and willing to perform his part of contract as per agreement dated 28.3.09 and is still ready and willing to do so? OPP.*
- 3. Whether the sale deed no.470 dated 24.4.2009 executed by defendant no.1 in favour of defendants no.2 & 5 is illegal, null and void and not binding upon the rights of the plaintiff? OPP.*
- 4. Whether the plaintiff has no cause of action to file the present suit? OPD.*
- 5. Whether the plaintiff has not come to the court with clean hands? OPD.*
- 6. Whether the defendant is entitled to the special costs u/s 35A of CPC? OPD.*
- 7. Whether the suit is bad for mis-joinder of necessary parties? OPD.*
- 8. Relief.*

3. The parties were afforded opportunities to lead evidence.

4. During the course of proceedings, the plaintiff filed an application for amendment of the plaint contending that the suit has been filed seeking specific performance of contract with consequential relief of declaration, however inadvertently the plaintiff could not claim relief of possession of land in question, therefore, necessary amendment be allowed in the plaint so as to claim consequential relief of possession of

the suit land.

5. The application was not opposed by defendant No.1(b). Whereas vehement opposition the application was offered by defendants No.2 to 5 contending that plaintiff could not seek relief of possession by way of amendment of the plaint; as per the agreement to sell dated 28.3.2009, there was no reference to the possession and the same cannot be claimed now and after the final arguments had been advanced, the prayer could not be allowed. Furthermore, nearly 9 years have elapsed and the amendment is barred by limitation; further the proposed amendment would change the nature of the suit because relief of possession is a different cause of action and stands on a different footing. Therefore, the amendment should not be allowed.

6. After hearing the arguments, the trial Court vide impugned order dated 7.5.2019 accepted the application, which left the defendants aggrieved and they have filed the present revision petition.

For ready reference the operative part of the impugned order runs as follows:

After hearing counsels for both the parties, it can be said that law of amendment is quite liberal and parties must be given an opportunity to include all its claim subject to condition that no prejudice is caused to opposite party. The basic purpose of allowing amendment is to minimize the litigation and power given to Courts for allowing amendment is wide enough which can even be exercised at any stage of the proceedings. The object of Order 6 Rule 17 is that the Court must determine the real issue between the

parties provided it does not cause prejudice to opposite party. The amendment at belated stage cannot be declined merely because it is sought at a belated stage.

Now in the present facts, the applicant/plaintiff has merely claimed that he be allowed to include the relief of possession while he has inadvertently failed to claim the same in a suit for specific performance. Proviso to Clause-II of Section 22 is quite clear and empowers Civil Court to allow the amendment at any stage. It will be apt to record that applicant (in the application only) has stated that he do not want to adduce any oral or documentary evidence pursuant to his proposed amendment of possession and resultantly, it can safely be held neither any prejudice will be caused to opposite party nor the cause of action will be effected. Judgments as relied by applicant squarely applies to the present fact whereas judgments as relied by respondents can clearly be distinguished while those pertain to suits for recovery or declaration. Accordingly, the applicant in hand stands allowed and amended plaint is taken on record.

While applicant/plaintiff being master of the suit has merely claimed additional relief of possession by way of aforesaid application which has been allowed, there is no ground to deviate towards the other proceedings or trial. Accordingly, case file posted for rebuttal evidence, if any, and for arguments.

7. Notice of the revision petition was issued to respondent No.1 only, who put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. I find that the order does not suffer from any illegality or infirmity. It does not have any element of arbitrariness or perversity. The proposed amendment was allowed for effective and final adjudication of controversy between the parties. Therefore, the relief of possession has been sought, which is ancillary in nature.

10. Learned counsel for the revisionists has vehemently attacked the impugned order stating that it is not sustainable and is liable to be set aside. It has allowed seeking relief of possession, which has become time barred by now and such type of amendment cannot be allowed. In support of his contentions, he has referred to judgment *Pankaja & Anr. Versus Yellappa (D) by LRs & Ors., 2004(3) RCR(Civil) 723* as well as *Ragu Thilak D.John Versus S.Rayappan, 2001(1) RCR(Civil) 726* by the Apex Court.

11. On the other hand, learned counsel for respondent No.1/plaintiff has contended that the amendment allowed is only formal in nature and nature of the suit does not get changed by such amendment. Furthermore, the relief sought is only ancillary in nature and if the plaintiff is successful in showing that he has been ready and willing to perform his part of the contract, he may be granted relief of specific performance by the trial Court, otherwise any other appropriate relief would be granted to the plaintiff. He has also referred to few judgments in support of his contention first being *Puran Ram Versus Bhaguram & Anr.2008(2) RCR(Civil) 499*, wherein it was observed that Court has

discretion to allow amendment of the plaint even where the relief sought to be added by amendment is barred by limitation. It was further observed that an amendment which subserves the ultimate cause of justice and avoids further litigation, should be allowed. It was further observed that allowing or rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. In the second judgment referred to the respondent No.1/plaintiff i.e. **Ram Niwas Versus Bramchari and others, 2009(3) PLR 716** by a Single Judge of this Court, it was observed that inclusion of relief of recovery of possession of property in a suit for specific performance by way of amendment of plaint at appellate stage, the recovery of possession of property is always considered as a ancillary relief and a party has a right to claim any relief which had been omitted at any stage of the proceedings and he can be allowed to amend the plaint on such terms. In another judgment **M/s.Ex-Servicemen Enterprises (P.) Limited Versus Sumey Singh, 1976 AIR(Delhi) 56** by Delhi High Court, in a suit for specific performance amendment of plaint was sought after suit was decreed in terms of compromise to seek relief of possession, which was not included in the original plaint and such amendment was allowed. He has further referred to judgment **Malkiat Singh Versus Munish Kumar and others, 2019(1) PLR 291** in support of his contentions.

12. After hearing the counsel for the parties and going through the judgments referred to by them, I find that no fault can be found with the order passed by the trial Court allowing the amendment of the plaint

and no reason is there to interfere with the impugned order, which is detailed and well reasoned nor suffering from any infirmity and illegality.

13. Thus, finding no merit in the civil revision petition, the same stands dismissed.

30.11.2022

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No