

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2661-2022 (O&M)

DATE OF DECISION: JULY 18, 2022

AMIT KUMAR

...PETITIONER

VERSUS

SAWINDER KAUR BHIMRAH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. SHIVVOY DHIR, ADVOCATE
FOR THE PETITIONER.

MR. VAIBHAV NARANG, ADVOCATE
FOR THE CAVEATOR-RESPONDENT.

MANOJ BAJAJ, J.(ORAL)

The petitioner (defendant) has filed this revision petition by invoking superintendence powers of this Court under Article 227 Constitution of India to challenge the order dated 11.5.2022 (Annexure P-5), passed by the Civil Judge (Jr.Divn.), Patti whereby the application under Order 6 Rule 17 CPC filed by the plaintiff-respondent has been accepted.

Briefly, the facts of the case are that the respondent (plaintiff) filed a suit for mandatory injunction against defendant (petitioner) and prayed for decree that the defendant be directed to accept amount of Rs.1 lakh and hand over the vacant physical possession of the suit property (two double storey shops) now amalgamated, situated at Ward No.12, village Patti-II, Tehsil Patti, District Tarn Taran and also claimed mesne profits @ ₹18,000/- per month. Further a decree of permanent injunction was also prayed for restraining the defendant from changing the nature of property.

The suit was filed by the plaintiff through his special power of attorney, namely, S. Gurinder Singh s/o Kuldeep Singh, as the plaintiff is residing abroad. According to him, the property in question was mortgaged by Darshan Singh (plaintiff's husband) through his attorney, namely, Charanjeet Singh (son of Darshan Singh) for a sum of ₹1 lakh by executing registered mortgage deed dated 8.11.2010 bearing No.2959, Zilad No.3112, Bahi No.1 in favour of defendant. Darshan Singh died on 28.12.2016, who had also executed a Will dated 30.9.2015 and by virtue of the same, the plaintiff inherited the said suit property. Though the defendant was asked on number of occasions to accept the mortgage money for handing over the vacant physical possession of the suit property, but the defendant has refused to accept the claim of the plaintiff, thereby giving her cause of action to institute the present suit.

The suit is being contested by the defendant by filing the written statement wherein the relationship of landlord-tenant between S.Darshan Singh and Surender Kumar, father of defendant was admitted and pleaded that the shop in question was taken on rent in the year 2007 at a monthly rent of ₹1000/-. The rent was increased periodically and upto 2018, the plaintiff and her son Charanjeet Singh collected advance rent @ ₹2000/- per month. The mortgage deed dated 8.11.2020 is also not in dispute as per the written statement, but denying the other averments of the plaint, it was prayed that the suit be dismissed.

Learned counsel has argued that the plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment of the plaint (Annexure P-1) and though the same was contested, but the Civil Judge

(Jr.Divn.), Patti erroneously proceeded to accept the same. He submits that when the application was moved, the parties had already adduced their respective evidence and with this amendment of plaint, *de novo* proceedings of the suit would commence and according to him the amendment can be allowed if the same is prayed at the initial stage of the suit. He submits that the impugned order deserves to be set aside.

At this stage, learned counsel for the caveator appears and submits that the amendment sought to be incorporated in the plaint is formal in nature and would not require any additional evidence to be adduced by the parties. He submits that the Civil Judge (Jr.Divn.), Patti has exercised the jurisdiction vested in it in accordance with law and therefore, the impugned order does not warrant any interference.

After hearing learned counsel for the parties and considering the above argument, this Court finds that by virtue of the amendment sought in the plaint, the plaintiff seeks to amend the headnote as well as the prayer clause by substituting the expression '*Suit for mandatory injunction*' with '*Suit for possession by way of redemption of mortgage deed dated 8.11.2010*' and this amendment neither alters the basic structure of the suit nor changes its nature or cause of action. Apart from it, the learned counsel for the plaintiff has stated that no fresh evidence is required to be led by the plaintiff, who has also affixed the court fee in compliance of the direction contained in impugned order.

Thus, in view of the above discussion, this Court holds that the Civil Judge (Jr.Divn.), Patti has considered the facts and circumstances of the case carefully, before accepting the prayer for amendment of plaint, and

the impugned order does not suffer from any illegality or impropriety.

Resultantly, the revision petition fails and is dismissed.

July 18, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No