

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5294-2015 (O&M)
Date of decision: 08.05.2023

Gurdeep Singh and others

...Petitioners

VS

Bhola Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Veeraj Sharma, Advocate for
Mr. Siddharth Gupta, Advocate,
Mr. Sumit Sinha, Advocate,
For the petitioners.

Mr. J.K.Singla, Advocate,
For the respondents

ARUN MONGA, J. (ORAL)

Revision petition herein *inter alia* is to set aside impugned order dated 04.07.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Phul, District Bathinda whereby application moved by petitioners under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint for restoration of the possession under Section 6 of the Specific Relief Act, was dismissed.

2. Learned counsel appearing on behalf of petitioners submits that petitioner/plaintiffs are owners in possession of the land in question. This land was allotted to father of petitioners by the Scheduled Caste Cooperative Society Ltd., Balianwali, District Bathinda being a shareholder. Defendant/respondents always tried to interfere into peaceful possession in the aforesaid land. Petitioners filed civil suit for a decree of permanent injunction. Petitioners also filed an application under Order 39 Rule 1 and 2 CPC along with the main suit seeking temporary injunction against

respondents. During pendency of the main suit, this application was allowed vide order dated 17.10.2014 (Annexure P-2). Thereafter, defendant/respondents filed an appeal against the said order Annexure P-2, which was dismissed by learned Additional District Judge, Bathinda vide order dated 11.05.2015.

2.1 Learned counsel appearing on behalf of petitioners further argues that on 26.10.2014, defendant/respondents forcibly entered into the peaceful possession of plaintiff/petitioners over the suit property and destroyed the crop. As such due to abovesaid circumstances, plaintiffs sought amendment of plaint for restoration of possession under Section 6 of Specific Relief Act. The application for amendment of plaint was dismissed vide impugned order. Hence, the instant revision petition.

3. Per contra, learned counsel for respondents vehemently opposes the revision petition and submits that petitioners have concealed material facts from the Court and as such, learned trial Court rightly dismissed the application seeking amendment of plaint. He would further canvass that on one hand, petitioners claim that on 26.10.2014, defendant/ respondents herein took forcible possession of the suit property and want to seek amendment of plaint for restoration of possession under Section 6 of the Specific Relief Act, while on the other hand, they are contesting the revision petition filed before learned Additional District Judge, Bathinda and vide order dated 11.05.2015, the stay order (Annexure P-2) granted by learned trial Court was upheld and appeal moved by defendant/respondents was dismissed. Thus, by way of amendment, petitioners want to change the nature of suit, which is impermissible.

4. I have heard learned counsel for the parties and gone through the case file.

5. I am of the view that the affirmative pleadings of petitioners herein, as contained in the application under Order 6 Rule 17 CPC, are that during pendency of trial after passing of ad interim injunction dated 17.10.2014 (Annexure P-2), possession has been taken over by defendants and since petitioners have been ousted from the possession by subsequent development of the facts, the same needs to be pleaded by amendment and correspondingly, the prayer clause also needs to be amended to seek restoration of the possession under Section 6 of the Specific Relief Act.

6. In course of arguments before this Court today, the said stand of petitioners is being strongly opposed on the ground that while on one hand, they had taken a contradictory plea before learned First Appellate Court while opposing the defendants' revision petition assailing the interim injunction granted to plaintiffs under Order 39 Rule 1 and 2 CPC, and had claimed that they are in possession and a completely contradictory plea has now been set up in the application seeking amendment that they have been ousted from the possession on 26.10.2014.

7. Relief can be modified by Court in view of the developments after filing of the suit and to that extent, even if amendment is not made, Court can proceed on its own as well, provided, of course if there is evidence led by the parties qua the subsequent developments. Be that as it may, the factum of possession shall be gone into based on the evidence to be adduced before learned trial Court since the affirmative averments in the application of plaintiffs are that they have been ousted from the possession during pendency of the trial Court proceedings. In the premise, it would be

appropriate that learned trial Court shall allow the parties to adduce evidence for and against the claim of the petitioners that they were dispossessed during pendency of the suit.

8. Accordingly, without expressing any opinion on the rival claims as to who is in possession, the proposed amendment, concededly being not time barred is allowed by setting aside the impugned order. Petitioners shall, accordingly, be permitted to place the amended plaint on record with opportunity to defendants to file amended reply, if they so wish, and learned trial Court thereafter shall proceed further, in accordance with law.

9. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

08.05.2023
vandana

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