

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

CR-6986-2017(O&M)

Date of decision:-13.3.2023

Ganesh Behl and others

...Petitioners

Versus

Sh.Onkar Nath Behl

...Respondents

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

Present: Mr.Sharad Mehra, Advocate
for the petitioners.

Mr.Anil Chawla, Advocate
for respondents No.1(ii)a, (ii)b,(ii)c.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 30.8.2017 (Annexure P1) passed by Civil Judge (Jr.Divn.), Amritsar vide which an application for amendment of plaint filed by the plaintiffs had been dismissed.

2. Briefly stated, facts of the case are that plaintiffs Ganesh Behl and others had brought a suit against defendants Onkar Nath Behl and others, seeking a declaration that they are owners in possession of the suit land and in addition to that craving for grant of permanent injunction restraining the defendants from interfering in possession of the plaintiffs.

3. On notice, defendants No.1 to 3 have appeared and filed

written statement contesting the suit. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. Thereafter, the case reached at the stage of final arguments. As it comes out from the perusal of the interim order, even the arguments had been heard partly when the plaintiffs filed an application seeking amendment of the plaint seeking relief of recovery of possession in the alternative if they are not found in possession of some part of suit property measuring 266.6 square yards sold by defendant No.3 to one Ramesh Pal.

4. That application was contested by the defendants. Vide the impugned order, the application was dismissed. For ready reference, the operative part of the order is being reproduced as under:

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

5. *Order 6 rule 17 CPC says that, "The Court may at any stage of proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Provided that no application for amendment shall be allowed after the trial has commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial."*

6. *In the present case application under Order 6 Rule 17 CPC has been moved by the plaintiffs on the ground that they intend to*

incorporate the relief of possession as an alternative relief. Perusal of the file reveals on that the present case was filed in the year 2009. The present suit is the suit for declaration that plaintiffs are owner in possession of the land. As per the plaintiffs there is no need to implead subsequent purchaser who has purchased the property during the pendency of the case as law of lispendence applicable to the subsequent buyer and he is bound by the decision of the case. Resultantly, the plaintiffs have prayed for adding the relief of possession in the alternative relief. Perusal of the record reveals on that trial in the present case has already been concluded. The parties have already been given the sufficient opportunities to prove on record their pleas and now the case is fixed for rebuttal arguments. Even argument has also been advanced partly by the learned counsel for the parties. During the course of arguments the present application has been filed. The law regarding the amendment of the pleading is contained in Order 6 Rule 17 CPC. Proviso appended to Order 6 Rule 17 CPC has put a rider on the wide power of the court to allow the amendment. In the present case the plaintiffs have not been able to establish on record their due diligence. It is settled preposition of law that plaintiff should prove his due diligence. Plaintiffs have not been able to bring on record the fact which have estopped them from filing the present application at the previous occasion. The case is pending since the year 2009. At this stage the trial has already concluded and I find no jurisdiction to allow the application under Order 6

Rule 17 CPC.

7. In view of above discussion, the application filed by the plaintiffs under Order 6 Rule 17 CPC is declined. Now to come up on 08.09.2017 for remaining arguments.

5. Feeling aggrieved, the plaintiffs have knocked at the door of this Court by way of filing the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the revision petition.

7. As has been observed by the trial Court in the impugned order, the application was filed at the fag end when the case was almost mature for decision inasmuch as the trial Court had heard arguments in part, then all of sudden the application in question was filed.

8. Proviso to order 6 Rule 17 CPC clarifies that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

9. In this case the trial was almost complete and there was no reason for plaintiffs to say that in spite of due diligence, they could not have asked for the amendment prayed for before commencement of the trial. It is not their case that they have been dispossessed during the pendency of the suit, rather their whole claim is based upon the fact that they are in possession as owners and defendants should not interfere in their possession. Once the plaintiffs come up with a prayer seeking possession as an alternative relief then they could certainly not asked for

grant of relief of permanent injunction and in that way, it would be doubtful whether suit for grant of declaration simpliciter is maintainable. The submission raised by learned counsel for the petitioners that if the amendment is allowed the plaintiffs would not lead further evidence and proceedings in the case would not be delayed cannot be accepted as such, because if the amendment of the application is allowed then additional issues may have to be framed and rather the entire nature of the case would be changed. The witnesses already examined by the plaintiffs may have to be summoned to face further cross-examination if the defendants so desired and an opportunity afforded to defendants to lead evidence that would amount to a *de novo* trial, as a result of major change in case of the plaintiffs.

10. The impugned order passed by the trial Court is quite detailed and well reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

12. The interim order dated 31.10.2017 passed by this Court staying passing of final judgment by the trial Court stands withdrawn.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

However, nothing discussion above shall have any bearing on

the final merits of the case.

13.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No