

2023:PHHC:157827

**140-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1.CR-823-2018 (O&M)

Dalip Singh and others

....Petitioners

Versus

Rattan Lal and others

..Respondents

2.CR-6791-2023 (O&M)

Dalip Singh and others

....Petitioners

Versus

Rattan Lal and others

..Respondents

Date of decision: 08.12.2023

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Jaivir Yadav, Sr. Advocate with
Ms. Parul and
Mr. Rohit Kumar, Advocates for the petitioners
in CR-823-2018

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Saurabh Gulia, Advocate for the petitioners
in CR-6791-2023

Mr. Sanjay Vij, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. These two connected revision petitions (CR-823-2018 and CR-6791-2023) filed by the same plaintiffs, to challenge the correctness of the two different interlocutory orders, passed by the trial court, have come up for final disposal.
2. In CR-823-2018, the plaintiffs assail the correctness of the interlocutory order passed by the trial court while dismissing

their application for permission to amend the plaint. The plaintiffs, during the pendency of the suit, asserted that the defendants are threatening to forcibly dispossess them from the property in dispute. In these circumstances, the plaintiffs pray for the permission to amend the plaint in order to incorporate the relief of the decree of permanent injunction alongwith the decree for declaration, which was originally sought. The trial court dismissed the application on the ground that the trial of the suit has commenced and the proposed amendment would not be necessary for proper decision on the real controversy involved between the parties.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Learned counsel representing the parties are ad idem that the plaintiffs have only prayed for a limited amendment to incorporate the prayer for the grant of injunction. The plaintiffs, while filing the application, have asserted as under:-

“6-A) That since about a month ago i.e in the month of February, 2016, the defendants have started going to the suit land and threatened the plaintiffs, in case they do not deliver peaceful possession of the suit land to them, they will take steps to take forcible possession of the suit land. That the threat made by the defendants is illegal. That they are liable to be restrained from doing so.”

5. Thus, the plaintiffs want to add para 6A and consequential prayer in the prayer clause.

6. The proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') does not provide that after the commencement of the trial of the case, the amendment cannot be allowed. It all depends upon the facts and circumstances of each and every case. In this case, the plaintiffs have asserted that in the month of February, 2016, the defendants started threatening the plaintiffs to dispossess them forcibly out of the land in dispute. Immediately on 14.03.2016, the application for amendment was filed. In the considered opinion of the Court, the application was required to be allowed in order to avoid multiplicity of the suits. While interpreting the proviso to Order VI Rule 17 CPC, the Supreme Court in Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another 2022 SCC Online SC 1128 has held that a genuine amendment in the pleadings should be allowed so as to decide the rights of the parties in an effective manner.

7. Keeping in view the aforesaid facts, the revision petition (CR-832-2018) is allowed.

8. In CR-6791-2023, the plaintiffs assail the correctness of the order passed on 28.10.2017, which, in appeal, has been affirmed.

Vide order dated 28.10.2017. The trial court rejected the plaint while exercising the enabling powers under Order VII Rule 11 CPC. The plaint has been rejected on the ground that the plaintiffs cannot maintain the suit for declaration that they have become owners by the way of adverse possession. The first appeal filed by the plaintiff has been dismissed on the ground that the plaintiffs have also taken a contradictory plea.

9. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

10. Learned trial court has overlooked the judgment passed by the Supreme Court in **Ravinder Kaur Grewal and others vs. Manjit Kaur and others (Civil Appeal No.7764 of 2014 decided on 07.08.2019)** It has been laid down that the suit filed by the plaintiff to claim the ownership on the basis of perfection of their title by passage of time is maintainable.

11. Learned counsel representing the respondents does not dispute the aforesaid legal position. However, he submits that the plaintiffs, while filing the suit, have on the one hand pleaded that they have become the owners in view of the Punjab Occupancy of Tenants (Vesting of Proprietary Rights) Act, 1953 whereas on the other hand, they have taken a contradictory plea that they have become owners by the way of adverse possession. He submits that the plaintiffs cannot continue in the suit with both the stands.

12. On the other hand, the learned senior counsel representing the petitioners submit that the plaintiffs have taken an alternative plea under Order VII Rule 7 CPC, which is permissible.

13. This Court has considered the submissions made by the learned counsel representing the parties.

14. Order VII Rule 11 CPC enlists the grounds on which a plaint can be rejected. The plaintiff is entitled to put forth with an alternative plea as provided in Order VII Rule 7 CPC in order to seek an effective relief from the court. In any case, this matter can be examined by the trial court while finally deciding the suit.

15. Keeping in view the aforesaid facts, the revision petition is allowed. The orders passed by the trial court as well as the First Appellate Court are set aside. The suit filed by the plaintiffs is restored to its original number.

16. At this stage, the learned counsel representing the respondent submits that the trial court should be requested to expedite the trial of the case as the suit was filed on 15.11.2012.

17. Learned senior counsel representing the petitioners have no objection thereto.

18. In view of the aforesaid, learned trial court is requested to make sincere endeavours for the expeditious disposal of the suit. It may be noted here that in the facts and circumstances of the present case, a de novo trial of the case shall not be necessary as

only a prayer for grant of injunction has been permitted to be added.

The defendants shall be at liberty to file their counter statement and thereafter, the court shall proceed with the case from the stage, it was dismissed under Order VII Rule 11 CPC.

19. All the pending miscellaneous applications, if any, are also disposed of.

08.12.2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No