

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

CR-1322-2023 (O&M)

Date of decision: 28.02.2023

Viveck Goel and others

...Petitioners

Versus

Rekha Goel

...Respondent

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

Present: Mr. Ajay Ghangas, Advocate for the petitioners.

H.S. MADAAN, J.

1. Under challenge in this revision petition is order dated 13.01.2023 passed by Civil Judge (Jr. Divn.) Gurugram in civil suit titled 'Rekha Goel Vs. Viveck Goel & Ors.' allowing an application under Order 6 Rule 17 CPC filed by the plaintiff for amendment of the plaint.

2. Briefly stated facts of the case are that planitiff Rekha Goel had brought a suit for grant of mandatory and permanent injunction against defendants Viveck Goel and others contending that she is owner in possession of the property bearing plots No.76 and 77 in Sector 15, Part-I, Gurugram since the year 2014. Defendant Viveck Goyal is a younger brother of husband of the plaintiff, as such, he along with his wife and children were permitted to reside in a portion of the house in question. The nature of their possession was as a licensee without

payment of any license fee. However, with passage of time family of the plaintiff has expanded inasmuch as her son has got married and the couple has two children therefore, the plaintiff is in urgent need of the suit property. Defendant No.1 is indulging in undesirable activities with the result the police has been visiting the house in question. Many people to whom defendant No.1 owes money are also visiting the house. The defendants did not vacate the suit property despite repeated requests and demands by the plaintiff and service of legal notices dated 05.02.2021, 05.06.2021 and 08.07.2021 by plaintiff upon defendant No.1, giving rise to a cause of action to the plaintiff to bring the suit in question for issuance of a direction to the defendants to hand over the physical and vacant possession of the suit property to the plaintiff and for restraining the defendants from causing any damage to the suit property or transferring its possession to any third party.

3. On notice, the defendants appeared and filed a joint written statement contesting the suit raising various legal objections contending that the suit is time barred and the alleged right/title, though, none, has got extinguished under Section 27 of the Limitation Act. Defendant No.1 and his family have been claiming and living as owner in the house without any interruption since the year 1997. The construction was completed by defendant No.1 from his own funds. Limitation to file suit for mandatory injunction is three years which has since long elapsed from the year 1997. The suit is not properly valued for the purpose of Court fee and jurisdiction as the market value of the property is more than Rs.10

crores and the plaintiff is liable to pay Court fee on such market value. Similarly limitation to seek declaration and for challenging the rights or cancellation of documents of title of defendant is three years period which has also expired. Defendant No.1 is holder of irrevocable registered power of attorney along with other document that power of attorney dated 04.04.1996 was registered in favour of defendant No.1 by erstwhile owner Sh. Rohit and on the basis of that power of attorney, defendant No.1 applied for sanctioning the plan for construction of suit property depositing money with HUDA and building was also constructed by defendant No.1 using his own funds. The plaintiff and their family got their house constructed on adjoining plot No.77 in which defendant No.1 had actively participated looking after the entire construction process and spending huge money from his funds. Both the parties had shifted to their respective houses at same time as owners in terms of family settlement/arrangement which was acted upon. Sh. Rohit apart from the execution of registered power of attorney had executed other accompanied documents like agreement to sell, special power of attorney, Will, receipt etc. The defendants prayed for dismissal of the suit.

4. During the course of proceedings the plaintiff filed an application for amendment of the plaint. After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Gurugram, vide impugned order dated 13.01.2023 accepted the application. The operative part of the order is being reproduced as under for ready reference:-

“5. The law pertaining to the amendment and pleading is enumerated in Order-VI Rule 17 Code of Civil Procedure, 1908

which gives the discretion to the court to alter or amend the pleadings on justifiable grounds at any stage for the purpose of determining the real question in controversy between the parties. However, such a discretion has been constrained with the proviso which states 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. In the case of Kailash v. Nanku (2005) 4 SCC 480 Hon'ble Apex Court held that in a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. In reference to the facts of the case in hand, it is pertinent to note that trial of the case has yet not begun.

6. Further, it is settled proposition of law that amendment which is necessary for just adjudication of suit must be allowed. By way of the present amendment, the plaintiff merely seeks to add additional relief of recovery of mesne profits as well as possession. No prejudice would be caused by the same to the defendants. The case is at nascent stage. Hence, the application in hand stands allowed. Amended plaint as filed with the application is taken on record. Now to come up on 19.01.2023 for filing of amended written statement.”

5. I have heard learned counsel for the revisionist besides going through the record.

6. Learned counsel for the petitioner has argued that the trial Court has clearly fallen in error in allowing the application for amendment of the plaint so as to seek mesne profits and relief of possession at a belated stage, wrongly allowing the application for amendment of plaint when it deserve to be dismissed. In support of his submission, he has referred to judgment **Anathula Sudhakar Vs.**

P.Buchi Reddy (Dead) by LRs. and Ors. in CA-6191-2001 decided on 25.03.2008.

7. However, after considering the submissions made by learned counsel for the petitioner and going through authority, I find that the impugned order is quite detailed and well reasoned. It does not suffer from any illegality or infirmity. The order does not from any perversity or arbitrariness, rather the discretion is shown to have been exercised by the trial Court in a judicious manner. No reason is there to upset the said order. The trial Court while accepting the application has observed that trial in the case is yet to begin and no prejudice would be caused by allowing amendment to the defendants. Therefore, the application has been accepted.

8. I do not find any merit in the revision petition and the same stands dismissed accordingly.

28.02.2023
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No