

109

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

CR-1415-2023 (O&M)

Date of Decision: 03.03.2023

Ajit

....Petitioner

Versus

Kallu Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Madan Sandhu, Advocate
for Mr.Ajay Shekhawat, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 11.01.2023 passed by learned Civil Judge (Jr. Division), Bhiwani, whereby application of petitioner under Order 6 Rule 17 CPC for amendment of plaint, was dismissed.

2. Succinct facts first, as pleaded in the revision petition.

2.1. Petitioner/plaintiff and respondent/defendant are the descendants of common ancestors of same family. Suit for partition of their joint-land was filed and the same was pending before Ld. Collector, Bhiwani when respondent/defendant had encroached the said disputed land. The petitioner/plaintiff then filed a suit for permanent injunction against respondent/defendant for not raising any temporary/permanent construction and for changing the nature of property in any manner and not to mortgage, sale, gift, lease, transfer, decree, shift of specific killa number and area of

above joint property or any specific portion to any person without getting legal partition of the joint property of plaintiff and respondent and other shareholders.

2.2. During pendency of suit, petitioner/plaintiff filed an application for amendment of plaint dated 19.02.2020. Reply was filed by respondent. However, vide impugned order, the Ld. Trial Court rejected application for amendment of plaint vide order impugned herein. Hence, the present revision.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent, as no serious prejudice would be caused to him. Notice to respondent is thus dispensed with.

4. Having seen the record appended with revision petition, I am of the view that it is the plaintiff, who will suffer delay in the trial proceedings if the application for amendment of plaint is allowed. Learned Trial Court ought not to have been swayed by the delay of proceedings for dismissing the application which would naturally cause prejudice to him in the absence of specific pleadings *qua* the claim in the plaint with respect to the exclusive possession of the suit land, which is otherwise implicit from the plea in the plaint that the defendant is threatening *inter alia* to take possession from the plaintiff. That apart, sufficient explanation has also been furnished in the application seeking amendment saying that during the subsistence of *status-quo* order passed by the trial Court the poultry sheds were illegally constructed by the defendant. It is stated that though the plaintiff was aware of the existence of poultry farm but the amendment is formal in nature on

account of the fact that the injunction, which is sought, should not be confined to only poultry farm, as pleaded in the unamended plaint and it includes two sheds as well, which the defendant had constructed during pendency of the suit for the purpose of poultry farm. In the premise, no *prejudice* would be caused to defendant, if the amendment is allowed.

5. On a Court query, learned counsel for petitioner also informs that defendant’s evidence is yet to be commenced and delay, if any, will be in fact be disadvantageous to plaintiff and no *prejudice* would be caused to defendant *qua* delay.

6. As an upshot of above discussion, the revision is allowed. Impugned order is set aside and the application under Order 6 Rule 17 CPC filed by petitioner/plaintiff, is allowed.

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

(ARUN MONGA)
JUDGE

March 03, 2023
ashish

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