

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

**Civil Revision No. 2718 of 2023(O&M)
Date of Decision: 18.08.2023**

Smt. Vijaya Mittal & Ors.

...Petitioners

Versus

Anil Khetan & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. J.K. Singla, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/ plaintiffs against the order dated 18.04.2023 passed by the Court of Civil Judge (Jr.Divn.), Bilaspur whereby the application filed by the petitioners seeking amendment of the plaint has been dismissed.

2. The counsel for the petitioners has, *inter alia*, contended that initially the petitioners filed suit for declaration to the effect that they are joint owners and in joint possession of the suit property and they also claimed relief of permanent injunction against the defendants/ respondents. It is further submitted that actually defendant No.1 Anil Khetan is in permissive possession of the suit property as a care taker on behalf of the plaintiffs, he being real brother of plaintiff No.1 Smt. Vijaya Mittal and that earlier defendant No.1 never objected the petitioners from entering into the suit property but during the pendency of the suit, defendant No.1 stopped the petitioners from entering into the suit property and on account of the said subsequent event the petitioners intend to amend the plaint in order to seek consequential relief of possession of the suit land and accordingly filed an

application under Order 6 Rule 17 CPC. That, however, the said application

has been dismissed by the learned trial Court vide order dated 18.04.2023 on the ground that the application has been filed at a belated stage and it will result into *de novo* trial, in case the proposed amendment is allowed and further the petitioners have not exercised due diligence and the application has been filed at the stage when both the parties have already concluded their evidence. The counsel for the petitioners further submits that the proposed amendment is not barred under the provisions of law and that no prejudice is going to be caused to the other party if the proposed amendment is allowed. The counsel for the petitioners further gave undertaking that in case the petitioners are given permission to amend the plaint, no fresh evidence would be adduced by the petitioners and as such it will not amount to *de novo* trial in any manner.

3. I have considered the submissions made by counsel for the petitioners.

4. Originally petitioners/ plaintiffs have filed suit for declaration to the effect that they are co-owners in joint possession of the suit property. During the pendency of the suit, petitioners moved an application under Order 6 Rule 17 CPC for permission to amend the plaint on the ground that now the defendant No.1 who is in permissive possession of the suit property has restrained the petitioners from entering into the suit property. Thus, the amendment of the plaint was sought by the petitioners on account of an event which had taken place during the pendency of the suit and as such the learned trial Court fell into error by dismissing the application moved under Order 6 Rule 17 CPC on the ground that it has been filed at the belated stage when the parties have already concluded their evidence and is being moved without exercise of due diligence on part of the petitioners. The merits of the proposed amendment in the plaint are not required to be gone into at the

stage of considering the application under Order 6 Rule 17 CPC. The question as to whether the petitioners indeed were in joint possession of the suit property at the time of institution of the suit, or not, shall be adjudicated upon by the trial Court in the light of the evidence that shall be led by the parties. May be it is found that the petitioners were not in possession of the suit property at the time of filing of the suit. However, if the Court arrives at a conclusion that petitioners were dispossessed only during the pendency of the suit, the absence of an appropriate prayer may result in further complications and multiplicity of litigation. Furthermore, if the application for amendment of the plaint is allowed, it will not amount to *de novo* trial as the counsel for the petitioners has given undertaking that no fresh evidence is required to be adduced even after the filing of the amended plaint as the parties have already led their evidence.

5. In the light of above discussion, the impugned order is hereby set aside and the civil revision petition is allowed and the application filed by the petitioners under Order 6 Rule 17 CPC is allowed subject to costs of Rs.7000/- which is to be paid by the petitioners to the opposite party on the next date fixed in the trial Court.

6. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If respondents are summoned to contest this litigation, they will have to incur huge expenses to defend this case. However, liberty is granted to the respondents that if they feel dissatisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

18.08.2023
Jiten

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