

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

CR-4868-2019(O&M)

Date of decision:-21.3.2023

Dharambir and another

...Petitioners

Versus

Smt.Raj Dulari and others

...Respondents

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

Present: Mr.Atul Yadav, Advocate
for the petitioners.

Mr.Krishan Sharma Bhardwaj, Advocate
for the respondent No.1.

H.S. MADAAN, J.

1. This revision petition is directed against order dated 18.7.2019 passed by Civil Judge (Jr.Divn.), Gurugram vide which she had allowed application for amendment of plaint filed by the plaintiff.

2. Briefly stated, facts of the case are that plaintiff Smt.Raj Dulari had filed a suit against defendants Mehtab @ Mahabir Singh son of Khazan Singh, Vikram son of Mehtab @ Mahabir Singh, Dharambir son of Leela Ram, Beermati wife of Dharambir, all residents of village Patherheri, Tehsil Manesar, District Gurugram, seeking a declaration and permanent injunction on the averments that she had purchased the suit property from defendant No.1 Mehtab @ Mahabir Singh vide sale deed dated 15.11.2017 over which a pucca house was already constructed and a tubewell was installed in that property; at the time of the execution of the sale deed, the vendor had handed over vacant physical possession of the

suit property to the vendee Smt.Ram Dulari and mutation was sanctioned in favour of the plaintiff on the basis of that sale deed, however on 23.11.2017, the defendants wrongly interfered in the said possession of the plaintiff and plaintiff had moved an application before SHO P.S. Bilaspur on 24.11.2017; the defendants did not desist from their attempts to dispossess the plaintiff from the suit property. Feeling aggrieved, she had brought the suit in question.

3. On getting notice, defendants No.3 and 4 appeared and filed a written statement contesting the suit contending that the suit property is ancestral qua the answering defendants and oral partition had taken place between the joint owners in the year 1988 and the land bearing Killa No.99//6/2 besides some other land came in exclusive possession of answering defendants; they have constructed a pucca house over that property in the year 1989 besides installing a tubewell therein in the year 1990 after obtaining electricity connection No.PD11-3265; demarcation was got conducted by Tehsildar, Manesar on 9.2.2018 and it was found that defendant No.3 Dharambir was in possession of the house; the electricity connection was provided to the house in question on 27.8.2013; the father of the defendant No.3 was a freedom fighter and his *SAMADHI* is there in the disputed land, in that way, the answering defendants are in exclusive possession of the disputed property having a house therein and they are residing in that property; the plaintiff had purchased 1/6th share from defendants No.1 and 2 vide a sale deed dated 15.11.2017 and she had filed the suit on 6.12.2017, therefore it could not be believed that construction of house was raised by her within such a short period. The

answering defendants denied that vendors of plaintiff i.e. defendants No.1 and 2 were in exclusive possession of the house as owners or that they had delivered possession thereof to the plaintiff. The defendants prayed for dismissal of the suit.

Defendants No.1 and 2 had not appeared despite service and they were proceeded against ex-parte.

4. During the course of proceedings before the trial Court, the plaintiff filed an application under Order 6 Rule 17 CPC seeking amendment of the plaint to incorporate alleged subsequent events contending that the plaintiff had initially filed a suit qua land measuring 5 kanals 1 marla being 1/6th share out of total land measuring 30 kanals 7 marlas; after filing of the suit taking advantage of absence of plaintiff and her relative, the defendants harvested crop of plaintiff from her fields and unauthorizedly occupied the residential house constructed on land bearing rectangle No.99, killa No.6/2 and they illegally took possession of tubewell installed therein, therefore the plaintiff is entitled to a decree for possession by way of mandatory injunction directing the defendants to hand over the peaceful vacant possession of residential house and tubewell along with the land measuring 5 kanals 1 marla located in rectangle No.99, killa No.6/2 min-south. The plaintiff sought amendment of the plaint accordingly.

5. That application was strongly resisted by the defendants No.3 and 4.

6. Vide the impugned order dated 18.7.2019, the application was allowed.

7. Such order left the defendants No.3 and 4 aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents and respondent No.1 has put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. As it comes out from the record the suit property is part of the joint land in which defendants No.1 and 2 along with defendant No.3 are co-sharers and formal partition has not yet taken place. Although the plaintiff claims that her vendors defendants No.1 and 2 were in exclusive possession of the suit property over which they had constructed a house and had installed a tubewell therein but then defendants No.3 and 4 claimed that they have been in possession of the suit property including the residential house and have dug up a bore there. The plaintiff is a vendee from defendants No.1 and 2, who are co-sharers in the joint khata. Unless the vendors themselves were in exclusive possession of the suit property, which too within their share, they could not possibly have parted with the exclusive possession of the suit property in favour of their vendee the plaintiff. At the most the plaintiff stepped into shoes of her vendors acquiring a right to get separate possession of her share to the extent purchased by her from her vendors. The plaintiff had filed a suit for declaration and permanent injunction. Subsequently, she is seeking amendment of the suit to seek possession of the suit property. However, considering the facts and circumstances of the case, the remedy open to her is to seek partition instead of filing a suit for declaration, permanent

injunction and possession. The plaintiff had filed a suit for declaration and permanent injunction but when Local Commissioner visited the spot and found defendant No.3 Dharambir to be residing there along with his family then to meet with such situation, she filed an application seeking possession of the suit property.

10. A perusal of the impugned order goes to show that the trial Court has not given proper reasons for allowing the application. After reproducing the stand taken by the parties, the application was disposed of by giving reasons in para No.5, which for ready reference are being reproduced as under:

5. Considering the amendment sought to be made by Applicant/Plaintiff, is pertaining to subsequent developments taking place concerning the possession of suit property, being forcibly taken away from the plaintiff, necessitating the need for addition in prayer, for seeking possession and consequent relief of mandatory injunction, sufficient merits have been shown for exercise of powers envisaged under Order VI, Rule 17 CPC, Application at hand is dispose off as allowed.

11. This reasoning is least convincing and shows non-application of judicious mind. The trial Court has nowhere observed that the proposed amendment is necessary for deciding the real controversy between the parties and rather it has been allowed in a very casual and cursory manner resulting in changing the very nature of the suit, which is not legally permissible. The order cannot stand judicial scrutiny. The trial

Court was not justified in allowing the application for amendment of the
plaint.

12. Accordingly, the revision petition is accepted, the impugned
order is set aside and the application for amendment filed by the plaintiff
is dismissed.

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

21.3.2023

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**