

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-942-2024

Date of Decision: 15.02.2024

JAGTAR SINGH .....PETITIONER  
VS  
HAKAM KHAN AND OTHERS .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rakesh Gupta, Advocate for the petitioner.  
\* \* \* \*

GURBIR SINGH, J.

1. This revision petition is filed under Article 227 of the Constitution of India for setting aside the impugned order dated 08.01.2024 (Annexure P-11) passed by learned Civil Judge (Junior Division), Patiala whereby the application under Order 6 Rule 17 CPC filed by respondents No.1 to 3/plaintiffs has been allowed.
2. Brief facts of the case are that respondents Nos. 1 to 3/ plaintiffs (hereinafter called, "plaintiffs") filed a suit for permanent injunction restraining the petitioner along with respondent No. 4 to 7 (hereinafter called, "defendants") from interfering in peaceful possession of the plaintiffs and making any kind of encroachment over the agricultural land, as described in the head note of the plaint. It has been pleaded that the defendants want to encroach upon the suit land and are threatening to dispossess the plaintiffs. Along with the suit, an application under Order 39 Rules 1 and 2 read with Section 151 CPC was also filed.

2.1 Upon notice, Jagtar Singh defendant No.1 petitioner herein and defendant No.5, namely, Lacchman Singh appeared and filed their respective written statements to the civil suit as well as application under Order 39 Rule 1 and 2 read with Section 151 CPC. They contested the suit as well as the application, thereafter remaining defendants who were proforma respondents No.5, 6 and 7 were proceeded ex-parte. On 10.05.2019, petitioner moved an application under Order 7 Rule 11 CPC for dismissal of the suit. Plaintiffs filed reply to the said application. On 05.07.2019, petitioner failed to appear before the learned trial Court and was proceeded against ex-parte. Defendant No.5 filed counter claim to the main civil suit against the petitioner and others, seeking declaration that partition dated 05.07.2005 was null and void and the same was without the consent of the counter claimant who was coparcener in the ancestral property measuring 181 kanals 18 marlas and for permanent injunction restraining the defendants of the counter-claimant from interfering in the possession of the counter claimant and dispossessing the counter claimant from the said property illegally and forcibly. Application under Order 39 Rule 1 and 2 read with Section 151 CPC was also filed along with the counter claim. On the basis of statement suffered by respondent No.4 (defendant No.5) that he had no objection if stay was granted, the learned trial Court accordingly allowed the application under Order 39 Rule 1 and 2 read with Section 151 CPC filed by the plaintiffs. On knowing about the passing of ex-parte order dated 05.07.2019, the petitioner moved an application for setting aside the ex-parte order which was allowed vide order dated 19.09.2019.

2.2. An application under Order 6 Rule 17 CPC read with Section 151 CPC was moved by the plaintiffs/respondents No.1 to 3 seeking amendment in

the suit by adding head note, para No.5A, 5B and few line at the end of para No.6. Reply to said application has been filed by the petitioner/defendant No.1 by raising objections that it is not maintainable. It has been filed just to delay the process of law. The proposed amendment would change the nature of the suit. The aforesaid application was allowed by learned trial Court vide impugned order dated 08.01.2024.

2.3 It is submitted that with regard to forcible possession, complaints from both sides were made to the SDM, Patiala who called the report regarding the status of suit land. A report dated 23.07.2021 was received that petitioner/defendant No.1 and other co-sharers were found to be in possession of the suit property. It is further contended when land is already in possession of the petitioner and other co-sharers then how the plaintiffs/respondents No.1 to 3 can take possession of the same, which has been averred in the amended plaint.

3. Learned counsel for the petitioner/defendant No.1 submits that the stand of petitioner/defendant No.1 in the written statement as well as counter claim is that plaintiffs/respondents No.1 to 3 are not in possession of the suit property. The application for amendment has been filed at a belated stage seeking possession of the land on the ground that defendants during the pendency of the case in the first week of June 2023 took forcible possession of the suit land. The amendment is sought by cleverly taking the plea that possession of the suit property was taken during the pendency of the case whereas plaintiffs are not in possession of the suit property from the date of filing of the suit.

4. I have heard the submissions made by the learned counsel for the petitioner/defendant No.1.

5. The plaintiffs have sought amendment due to happening of subsequent events. The merit of the proposed amendment is not to be seen at this stage and the same is the question of trial. It is a question of evidence whether the plaintiffs were in possession of the suit property at the time of filing of the suit or were dispossessed during the pendency of the suit. The plaintiffs are seeking amendment on the ground that they were dispossessed during the pendency of the case, so, they cannot be deprived to amend the pleadings. The petitioner/defendant No.1 has right to file written statement to the amended plaint and can take any plea. In case ***Life Insurance Corporation of India Versus Sanjeev Builders Private Limited and another, 2022 AIR (Supreme Court) 4256***, the law of amendment has been summed up as under :-

*“70. Our final conclusions may be summed up thus:*

*(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided*

*(a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

*(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

**(iv)** *A prayer for amendment is generally required to be allowed unless*

*(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

*(ii) the amendment changes the nature of the suit,*

*(iii) the prayer for amendment is mala fide, or*

*(iv) by the amendment, the other side loses a valid defence.*

**(v)** *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

**(vi)** *Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

**(vii)** *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

**(viii)** *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

**(ix)** *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

**(x)** *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated*

*on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

**(xi)** *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See **Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897**). ”*

6. Since the averments of the plaintiffs/respondents No.1 to 3 seeking amendment pertain to specific event, which took place during the pendency of the case and the petitioner/defendant No.1 will get right to file written statement to the amended plaint, so, I do not find any illegality in the order passed by the learned Court below. The revision petition is without merit and it is dismissed accordingly.

15.02.2024  
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(GURBIR SINGH)  
JUDGE

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |