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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of decision: 13.05.2024

Jasminder Kaur and another

...Petitioners.

Versus

Darshna Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Surinder Singh, Advocate for
Mr. Inderjit Sharma, Advocate
for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 18.12.2023, passed by learned Additional Civil Judge (Senior Division), Fatehgarh, vide which the application filed by the petitioners under Order 6 Rule 17 CPC seeking amendment of the plaint, was dismissed.

2. The brief facts relevant for adjudication of the present revision petition are that the petitioners/ plaintiffs filed a suit for separate possession by metes and bounds to the extent of ½ share of plot bearing Khewat/ Khatoni No.144/187 bearing Khasra No.40//25/6/1/2 (0.8) i.e. (0.4 Marla) as per jamabandi for the year 2017-18; and for permanent injunction restraining the defendants from alienating the suit property and for mandatory injunction with the averments that the plaintiffs purchased the

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suit property from defendant No.1 who was the previous owner of the suit property vide sale deed No.773 dated 28.05.2013, through her Power of Attorney i.e. defendant No.2-Suresh Kumar. The notional possession was delivered to the plaintiffs after the execution and registration of the said sale deed regarding the said vacant plot, shown to the plaintiffs prior to sale. But they came to know after the demarcation that the said suit property was in possession of defendants No.4 and 5, who had raised construction thereupon in an illegal manner. They requested the defendants to hand over the vacant possession of the suit property to the plaintiffs by removing illegal construction but in vain.

3. Upon notice of the aforesaid suit, respondents No.3, 4, and 5 filed their written statements, wherein they denied the averments made by the plaintiffs in the plaint. Defendant No.4, in his separate written statement alleged that he had purchased the property measuring 0K-3M i.e. 3/8th share out of 0K-8M comprised in Khasra No.40//25/6/1/1/(0-8) bearing Khewat No.144, Khatoni No.184, situated at Sirhind, from its previous owner Paramjit Kaur through registered sale deed dated 17.06.2005. Defendant No.5 further alleged in his written statement that he had purchased the property through registered sale deed dated 17.06.2005 through Sucha Singh and has spent huge amount for raising construction of the house.

4. During pendency of the civil suit, the petitioners sought amendment of the plaint by filing application under Order 6 Rule 17 CPC, alleging that the defendants have concealed the very material facts from the plaintiffs/ petitioners at the time of execution of sale deed in question and

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the property shown by the defendants at the time of execution of sale deed was different than the real property where illegal construction had been raised by respondents No.4 and 5. By way of amendment, the petitioners want to add a relief of alternative recovery of Rs.20,80,000/- in case the relief of permanent and mandatory injunction regarding the suit property is not granted. The said application was dismissed vide order dated 18.12.2023 by the trial Court. Aggrieved against the said order, the petitioners have knocked the doors of this Court by way of filing the present revision petition.

5. Learned counsel for the revision petitioners has contended that the proposed amendment is not likely to change the nature of the suit, rather it is necessary for just decision of the case. The amendment sought is neither contrary to the suit filed by the petitioners nor it is likely to cause any prejudice to the other party.

6. I have heard learned counsel for the petitioners and have gone through the relevant record.

7. The perusal of application filed under Order 6 Rule 17 CPC for amendment of the plaint shows proposed amendment was sought for adding alternate relief of recovery of Rs.20,80,000/- in case the relief of permanent and mandatory injunction regarding the suit property was not granted. So when only the alternative relief of recovery is to be added, then it is not likely to change the nature of the suit. The respondents will also be getting the opportunity to file written statement to the amendment plaint. As such, no prejudice is likely to be caused to the defendants.

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8. Keeping in view the above, the present revision petition is allowed and the impugned order dated 18.12.2023 is hereby set aside. If, at the final stage, the trial Court passes a decree of recovery of said amount, then the court fee, as per law, shall be recovered from the petitioners.

9. Notice of this petition is not being issued to the respondents to avoid delay and as it will cause financial burden on them. If the respondents are not satisfied with this order, they can move an application for recalling of this order within 30 days.

10. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

13.05.2024.

komal

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