

134.

2024:PHHC:029990

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

Civil Revision No.1275 of 2024 (O&M)
Date of Decision: 29.02.2024

Jasminder Kaur and another

... Petitioners

Versus

Kamaljit Kaur alias Kanwaljit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

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

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 16.01.2024 passed by learned Additional Civil Judge (Senior Division), Fatehgarh, whereby the application filed by the petitioners-plaintiffs under Order 6 Rule 17 CPC seeking amendment in plaint, has been dismissed.

2. Brief facts of the case are that the petitioners-plaintiffs (hereinafter called, “plaintiffs”) filed a suit for separate possession to the extent of ½ share of suit property and also sought for permanent and mandatory injunction, with the averments that respondents-defendants No.1 to 3 (hereinafter called, “defendants”), in connivance with each other, sold the suit property to the plaintiffs vide sale deed dated 23.08.2017, but on demarcation in the year 2018, the plaintiffs, who are husband and wife, came to know that the plot that was shown by

defendants No.1 to 3 to them, was found in possession of defendants No.4 and 5, who had made illegal construction thereupon. The plaintiffs many times requested them to deliver the possession of suit property, but they were refused and threatened to alienate the suit property.

2.1 Upon notice, defendants appeared. Defendants No.1 and 2 filed written statement by denying the averments made by the plaintiffs in the plaint. Defendant No.4 filed separate written statement by contending that he had purchased the suit property from its owner Paramjit Kaur vide sale deed dated 17.06.2005 whereas defendant No.5 contended that she had purchased the property from Sucha Singh vide sale deed dated 14.09.1987 and stated that plaintiffs have no concern with their property.

2.3 During pendency of suit, plaintiff No.1 moved an application under Order 6 Rule 17 CPC for amendment in the plaint by contending that defendants No.1 to 3 concealed the material facts. Said defendants showed some other property to plaintiff at the time of execution of sale deed than the real property whereby construction had been made by defendants No.4 and 5. By way of amendment, plaintiff No.1 wants to add the relief of alternative recovery of Rs.20,80,000/- in case the relief of permanent and mandatory injunction with regard to suit property is not granted.

2.4 On the other hand, the stand taken by the defendants is that the sale deed was got executed by the plaintiffs only after physically

seeing the land in question. The trial in the case has already commenced and the proposed amendment will change the nature of suit.

2.5 Vide order dated 16.01.2024, the learned trial Court, dismissed the application of the plaintiff by observing that the amendment sought would change the nature of the suit. It is the said order which has been challenged by the plaintiffs before this Court by way of present revision petition.

3. Learned counsel for the petitioners-plaintiffs submits that the proposed amendment will not change the nature of the case. It is necessary for the just decision of the case. No prejudice will be caused to the respondents.

4. I have heard the submissions of learned counsel for the petitioners and have gone through the file.

5. A perusal of the application so filed by the petitioner-plaintiff No.1 seeking amendment in the plaint would show that it has been filed only for adding the alternative relief of recovery of Rs.20,80,000/- in case the relief of permanent and mandatory injunction with regard to suit property is not granted. So, if that prayer for amendment is allowed, it will neither change the cause of action nor any averment will be changed. No prejudice would be caused to the respondents and they would be given opportunity to file written statement to amended plaint. Neither cause of action would change nor any new plea is being added by way of amendment. Law of amendment

is liberal. In order to do complete justice to the parties, the proposed amendment is necessary. So, the impugned order deserves to be set aside.

6. Notice of this petition is not being issued to the respondents as it may linger on the case and may cause financial burden on them.

7. In view of above, without commenting anything on the merits of the case, present revision petition is disposed of and the order dated 16.01.2024 is hereby set aside, however, subject to payment of costs of Rs.2,500/- to the respondents. If, at the final stage, the trial Court passes a decree of recovery of amount, then the court fee, as per law, shall also be recovered from petitioners.

8. If the respondents are not satisfied with this order, they can move an application for recalling of this order within 30 days.

9. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

February 29, 2024
sanjeev

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