

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****CR-4092-2023 (O&M)****Date of Decision : 09.09.2024**

Dharam Pal

....Petitioner

VERSUS

Balwinder Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Onkar Rai, Advocate for the petitioner.

Mr. Tarun Singla, Advocate for respondent Nos.1, 2, 4 and 6.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 21.04.2023 whereby the application filed by the plaintiff-petitioner for amendment of the plaint has been rejected.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner, through a power of attorney holder, filed a suit for declaration to the effect that he is owner in possession of the properties as detailed in the plaint. Written statement was filed by the defendant-respondents. Issues were framed. After three of the witnesses of the plaintiff-petitioner had been examined, the present application was filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint on the ground that during the cross-examination of the power of attorney holder of the plaintiff-petitioner it emerged that the possession had been taken by the defendant-

respondent No.1 and hence the necessity for filing the application for amendment seeking possession of the property in dispute. Reply was filed to the application. Vide the impugned order dated 21.04.2023, the application was dismissed.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner is residing abroad and that the suit was filed through the power of attorney holder. During the cross-examination of the power of attorney holder it came on the record that the possession of the suit property had been taken by the defendant-respondent No.1 and hence the necessity for the amendment of the plaint to incorporate the prayer of possession. In support of his argument, learned counsel for the plaintiff-petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors. [2006 (2) RCR (Civil) 577]** qua the proposition that since the cause of action arose during the pendency of the suit hence the amendment ought to have been allowed.

4. *Per contra* learned counsel for defendant-respondent Nos.1, 2, 4 and 6 has contended that the application for amendment is totally bereft of any details as to when the possession was taken by the defendant-respondent No.1. It is further the contention that in the absence of the date it cannot be said that taking of the possession was a subsequent event. It is further the contention that the plaintiff-petitioner knew all along that the possession was not with him and chose not to file a suit for possession. In support of his arguments, learned counsel for respondent Nos.1, 2 4 and 6 has relied upon judgments of this Court in the cases of **Kuljinder Kaur & Ors. vs. Gurbachan Singh**

Saini & Ors. [2023 (4) RCR (Civil) 335], Birender vs. Chanchal & Anr. [2024 (1) RCR (Civil) 621] and Hari Singh vs. Balvir Singh & Ors. [2024 (1) RCR (Civil) 641].

5. Heard.

6. In the present case the plaintiff-petitioner filed a suit for declaration to the effect that he is owner in possession of the properties as detailed in the plaint as well as for a decree for permanent injunction restraining the defendant-respondents from changing the nature of the property and from raising any type of construction. Written statement was filed. Issues were framed by the Trial Court on 21.09.2019. At the time of filing of the amendment application, three witnesses of the plaintiff-petitioner had been examined. The application for amendment was filed after cross-examination of PW1 Sital Ram i.e. power of attorney holder of the plaintiff-petitioner. It was averred in the amendment application that in his cross-examination PW1 Sital Ram has stated that the possession was not with the plaintiff-petitioner and hence the necessity for filing the application seeking amendment. By way of amendment para 5-A was sought to be added and certain changes were required to be made in para 8. The amendments sought read as under :

“5-A. That the defendant no.1 is in possession of the properties in dispute. The defendant no.1 has amalgamated the property shown as Property no.1 in his residential house by removing southern wall of the boundary wall of plaintiff. The said wall was abutting the

house/property of defendant no.1 situated on southern side. By doing so, he has made his property and property of plaintiff as one unit. Defendant no.1 is also using the Gate of plaintiff for ingress and outgress. It is further submitted that bricks of the said wall has also been used by stealing the bricks. So, plaintiff is also entitled to the relief of possession of his purchased property no.1. The matter does not end here, defendant no.1 has also been taken possession of property no.2 which is ownership of plaintiff. Defendant no.1 has sown plants there illegally. The plaintiff is also entitled to the relief of possession of property shown as property no.2 which is purchased by the plaintiff as detailed above."

And

"8. That the defendant no.1 on the basis of alleged will, is threatening plaintiff/attorney to alienate/mortgage/ transfer the properties in question illegally forcibly and in case, the defendant no.1 succeed in doing so, then the plaintiff shall suffer heavy loss and injury which cannot be compensated in terms of money."

7. Translation of the relevant portion of the cross-examination of the power of attorney holder of the plaintiff-petitioner, which is stated to be relied upon by the plaintiff-petitioner, reads as under :

“.....It is correct that as of today we i.e. I and Dharam Pal, were not in possession of the suit property. Volunteered Balwinder Kumar has taken forcible possession of the property in dispute. It is correct that Balwinder Kumar has his residential house in the disputed property which has been four walled and an iron gate has been installed therein. It is incorrect that Balwinder Kumar incurred expenses for installing the said iron gate. It is correct that in this property an electricity meter is also installed in the name of Balwinder Kumar. It is incorrect that the mother of Balwinder Kumar is also residing with him in the suit property. I do not remember as to on which date, month and year Dharam Pal gave me the power of attorney but by estimation it was about 03 years ago. I do not remember, however, Dharam Pal had gone to England about 5-6 years ago. It is correct that Dharam Pal did not deliver me the possession of the property in dispute at the time of giving the power of attorney.....”

8. A perusal of the cross-examination reveals that the power of attorney holder stated that the possession of the property was not with the plaintiff-petitioner or the power of attorney holder. He further stated that at the time of giving power of attorney the possession was not handed over to him. Further still, the application filed under VI Rule 17 CPC is totally bereft

of any details as to when the plaintiff-petitioner was dispossessed from the property and whether the said incident occurred after filing of the suit. The argument of learned counsel for the plaintiff-petitioner that the event being a subsequent event and hence the amendment ought to have been allowed, cannot be accepted. The reliance of learned counsel for the plaintiff-petitioner on the judgment in the case of **Rajesh Kumar Aggarwal** (supra) is also wholly misplaced as in the said case the cause of action which was sought to be introduced by way of amendment arose during the pendency of the suit and hence their Lordships held that the proposed amendment ought to have been granted. However, in the present case even the date on which the plaintiff-petitioner is alleged to have been dispossessed has not been mentioned in the amendment application. Infact, without so much as mentioning the date on which the plaintiff-petitioner was dispossessed now the amendment is being sought seeking the relief of possession, which cannot be permitted in law. No other argument has been raised.

9. In view of the above, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

09.09.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO