



CR-4314-2024

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

(132)

CR-4314-2024

Date of Decision: 05.08.2024

Dinesh Dhall

.....Petitioner

Versus

Jagmohan Singh Dail and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Balram Singh, Advocate, for the petitioner.

HARKESH MANUJA, J.(ORAL)

[1]. By way of the present petition, challenge has been laid to an order dated 17.05.2024 passed by learned Civil Judge (Jr. Divn.), Phagwara, whereby, an application seeking amendment of plaint invoking Order 06 Rule 17 CPC, at the instance of respondent/plaintiff stands allowed.

[2]. Briefly stating, respondents/plaintiffs filed a suit for permanent injunction against the petitioner-defendant with a prayer for restraining him from interfering in the peaceful possession over building i.e. B-XXVI-111-112 situated at Chowk Gaushala Road, Phagwara. Along with the suit, an application under Order 39 Rule 1 and 2 CPC for interim injunction was also filed. Initially on 08.04.2021, the parties were ordered to maintain status quo. Finally on 30.07.2021, the application for interim injunction filed at the instance of respondents/plaintiffs was dismissed followed by filing of an appeal at their instance. Lateron, 02.12.2021, an application came to be filed at the instance of respondents/plaintiffs seeking amendment of plaint so as to include the prayer qua possession of the suit property while stating that the respondents/plaintiffs were forcibly dispossessed therefrom on the intervening night of 8/9th April, 2021. The said application was opposed at



the instance of petitioner besides other two defendants. The trial Court vide order dated 17.05.2024 allowed the application filed at the instance of respondents/plaintiffs.

[3.] Aggrieved thereof, learned counsel for the petitioner/defendants submits that the application was not *bonafide* as the same was an afterthought. Learned counsel also points out that the application for grant of interim injunction, filed at the instance of plaintiffs/respondents No.1 to 4 was declined by the trial Court on 30.07.2021 followed by an appeal filed on their behalf, however, the application seeking amendment of plaints so as to include the relief of possession was filed much later on 02.12.2021 with the averments that they were dispossessed by the petitioner/defendants on the intervening night of 8/9th April, 2021. Learned counsel further submits that incase the respondents/plaintiffs were dispossessed on 8/9th April, 2021, this fact was never brought to the notice of trial Court at the time of disposal of application for grant of interim injunction or even at the time of filing of appeal on their behalf and thus, an attempt was made to mislead the trial Court. Learned counsel thus, submits that in such circumstances, the application for grant of amendment of plaint was liable to be dismissed.

[4.] I have heard learned counsel for the petitioner and have gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

[5.] In the present facts and circumstances, a suit for permanent injunction was filed at the instance of respondents/plaintiffs on February, 2021 while claiming themselves to be in occupation of the property in question. Lateron, in December, 2021, an application came to be filed at their instance seeking amendment of plaint so as to include the relief of

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possession qua the suit property while claiming that they were dispossessed during the pendency of suit on 8/9th April, 2021. In such circumstances, when the respondents/plaintiffs were claiming themselves to be in possession of the property in question as on the date of filing of plaint, no *malafide* can be attributed to their intent about non-disclosing of their dispossession at the time of disposal of their application for grant of interim injunction, as the trial Court while adjudicating upon such application for grant of interim injunction was required to take into consideration the pleadings and the actual status/position while was existing as on the date of filing of the suit. In such circumstances, the respondents/plaintiffs claiming to have been dispossessed on 8/9th April, 2021, from the property in question, at the hands of petitioner/defendants, their prayer for amendment of plaint so as to include the relief of possession by the trial Court has been rightly allowed and thus, no illeglity or perversity can be seen with the discretion exercised by the trial Court as the respondents-defendants are required to be afforded adequate opportunity to plead and prove their case during trial rather than curtailing their rights on account of technicalties. Hence, the present revision petition is dismissed a such.

[6]. Pending application(s), if any, shall also stand(s) disposed of.

(HARKESH MANUJA)
JUDGE

05.08.2024

anil

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