

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 3843 of 2022****Date of Decision: 10.01.2024**

Wahiden alias Wahidan and Another

... Petitioner(s)

Versus

Gurnam Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. S.S.Dinarpur, Mr.Arvind Singh,
Mr. Aman Godara and Mr. Rohit Singh, Advocates
for the petitioner(s).

Mr. Sonit Sinhmar and Mr. Manjeet Singh, Advocates
for the respondent.

Anil Kshetarpal, J.

1. The petitioners herein filed a suit for the grant of decree of permanent injunction restraining the defendants from forcibly dispossessing them from the property including the constructed plot measuring 439 square yards of three rooms, kitchen, verandah etc. They claimed to have purchased the property from the respondent, namely Gurnam Singh vide registered sale deed dated 28.12.2010. While defending the suit, the defendant claimed that in fact he executed a mortgage deed and not a sale deed. During the pendency of the suit, the plaintiffs were allegedly dispossessed from the property in dispute. They filed an application for restoration of possession which was allowed by the Court. Against the aforesaid order, a revision petition was filed in this Court. Hence, the

restoration of the possession was kept in abeyance. During the pendency of

the revision petition, the suit filed by the petitioners was dismissed on the ground that they have not sought a decree of declaration and they are not in possession. Hence, they filed the first appeal. During the pendency of the first appeal, they filed an application for permission to amend the plaint in order to seek the relief of declaration. The First Appellate Court has dismissed the same on the ground that it has been filed after substantial delay and it would result in changing the nature of the suit.

2. The correctness of the aforesaid order passed by the First Appellate Court is assailed in this revision petition.

3. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the petitioners, while reiterating the facts which have already been noticed, submits that gross injustice has been done to the petitioners.

5. On the other hand, the learned counsel representing the respondent submits that it would not be appropriate to permit changing the nature of the suit at this stage.

6. After having analyzed the facts of the case, this Court is compelled to make certain observations. It is evident that the petitioners have not been fairly dealt with. They are the purchasers of the property from the respondent through a registered sale deed. They filed a suit for injunction apprehending dispossession at the hands of the respondents. Their apprehension came to be true. Hence, they filed an application for restoration before the trial Court, which was allowed. However, in the revision petition, an interim order was passed in favour of the respondent.

7. Keeping in view the aforesaid facts, the trial Court shall have moulded the relief as provided under Order VII Rule 7 of the Code of Civil Procedure, 1908. The Court has inherent power to mould the relief in accordance with facts and circumstances of the case. Furthermore, when an application was filed before the First Appellate Court, the same was dismissed. In substance, the petitioners are only praying for the amendment of their prayer clause in order to claim the necessary relief.

8. In these circumstances, the First Appellate Court committed error in refusing to permit the petitioners to amend their plaint on the ground of delay and also on the ground that it would amount to change the nature of the suit. On careful reading of para 1 of the plaint, it is evident that the plaintiffs claim to be the owners in possession of the property by virtue of the sale deed. In such circumstances, the nature of the suit was not being changed. Only the prayer clause was sought to be amended and that also while keeping in view the subsequent developments which took place during the pendency of the suit. There is also no substance in the arguments of the learned counsel representing the respondent that it would amount to changing the nature of the suit.

9. Keeping in view the aforesaid facts and discussion, the present revision petition is allowed. The impugned order passed by the First Appellate Court is set aside. The application filed by the petitioners for permission to amend the plaint shall stand allowed. The proposed amended petition has been filed. The same shall be taken on record. However, if it has not been filed, the same shall be filed within a period of 15 days from the

date the petitioner enters appearance before the First Appellate Court.

10. In the facts of the case, the First Appellate Court shall permit the respondent to file his reply to the amended plaint and thereafter, proceed to decide the appeal, forthwith.

(Anil Kshetarpal)
Judge

January 10, 2024
“DK”

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