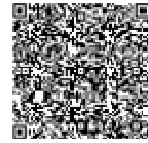


2025:PHHC:163941



CR-140-2023(O&M) 1

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-140-2023(O&M)

Date of decision : 26.11.2025

Mahesh Kumar

... Petitioner

Versus

Dilbag Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Yash Yadav, Advocate
for respondent no.1.

Mr. Jagdish Manchanda, Senior Advocate with
Mr. Devyansh, Advocate and
Mr. Nischal Chetanya Manchanda, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

1. Challenge in the present revision petition is to the order dated 01.12.2022 vide which the application filed by the petitioner (plaintiff) for amendment of the plaint had been dismissed by the trial Court.

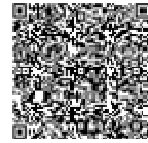
ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for declaration with consequential relief of permanent injunction and a perusal of the entire plaint, moreso, paragraphs 1, 3, 4 and the prayer clause would clearly show that it was the case of the plaintiff that the plaintiff and defendant no.1 were real brothers and were



joint owners in possession of plot / house no.418, Sector 22, Urban Estate, Gurgaon and a decree for declaration to the effect that the plaintiff and defendant no.1 were joint owners of the property in question was sought. It is argued that defendant no.1/respondent no.1 in his written statement had relied upon an alleged family settlement / partition in the form of alleged affidavit / agreement dated 04.06.2001 to state that partition had been effected. It is submitted that it is the case of the petitioner that no such partition took place.

3. Learned counsel for the petitioner has further submitted that before any witness of the petitioner could be examined, the petitioner moved an application dated 18.07.2022 for amendment of plaint and in the said application it was specifically stated that defendant no.1 had started harassing the plaintiff and his family members endlessly and was bent on grabbing the share of the plaintiff and thus, in order to end the frequent disputes, the plaintiff wanted to add the relief of partition. It is submitted that the said application for amendment was dismissed vide the impugned order dated 01.12.2022. It is argued that once it is the case of the plaintiff in the plaint that the property is joint, thus, seeking partition would be a necessary consequence of the said plea. It is submitted that it was specifically averred in the application that the plaintiff was being harassed by defendant no.1 and thus, in view of the same, he had sought to seek the relief of partition also. It is argued that there is no limitation period prescribed for seeking partition and the prayer made by the plaintiff is only

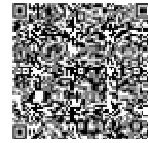


CR-140-2023(O&M) 3

a consequential relief which the plaintiff is entitled to, once the plea of the petitioner to the effect that the property in question is joint is accepted. It is submitted that allowing the application for amendment would help in avoiding multiplicity of litigation and would also help in finally adjudicating the case as the amendment sought is necessary for the proper adjudication of the case.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1

4. Learned counsel for respondent no.1, on the other hand, has opposed the present petition and has submitted that the petitioner at the time of filing of the suit could have made the prayer for partition and the fact that he did not make the prayer at that stage shows that the amendment sought is not bonafide. It is further submitted that in the present case the issues were framed on 14.11.2019 and the application dated 18.07.2022 had been filed subsequent to framing of issues and thus, it cannot be said that the plaintiff in spite of due diligence could not have earlier made the prayer of partition. It is submitted that the plaintiff if so desires, can file a separate suit and the amendment application should not be allowed in the present suit as the same would delay the trial. In support of his arguments, learned counsel for the respondent no.1 has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Jaspal Kaur and another vs. Mohinder Singh and others** reported as **2014 (9) RCR (Civil) 2935**. It is submitted that the trial Court had rightly dismissed the application filed under Order 6 Rule 17 CPC and the present revision petition being meritless deserves to be



CR-140-2023(O&M) 4

dismissed.

ANALYSIS AND FINDINGS

5. This Court has heard learned counsel for the parties and has perused the paper book and finds that the present revision petition is meritorious and deserves to be allowed and the impugned order dated 01.12.2022 is against law and deserves to be set aside for the reasons stated hereinafter.

6. It is not in dispute that the plaintiff-petitioner had filed a suit for declaration with consequential relief of permanent injunction. Paragraph 1, relevant portion of paragraph 3 as well prayer clause, which are relevant for consideration in the present case are reproduced hereinbelow:-

“1. That the plaintiffs and defendant No. 1 are real brothers and are joint owner and in possession of Plot/ House No. 418, measuring 220 sq. meters (253.12 sq. yards), Sector 22, Urban Estate, Gurgaon which is bounded as under:-

North : Road 10 meter wide

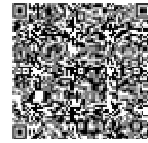
South : Plot No. 417

East : Plot No. 381-P/383

West : Road 10 meter wide

Situated at Sector 22, Urban Estate, Gurgaon. Site plan of the said plot / house is attached with the plaint. The Ground Floor of the house is marked by letters ABCD and shown in green, red colour, while first floor is marked by letters EFGH shown in yellow and red colour, the second floor is marked by letters IJKL shown in yellow and red colour, while common terrace is marked by letters MNOP shown in red colour.

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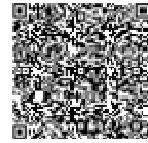


3.The defendants are colluding with each other with a view to harm and **injure the plaintiff, who is also joint owner/co-sharer in the entire plot and building or the plot No. 418** to which defendant no right, title or authority. Copy of approved site plan dated 17.11.2014 is enclosed for ready reference.

xxx xxx xxx

It is therefore, most respectfully prayed that a decree for declaration with consequential relief of permanent injunction ***to the effect that plaintiffs and defendant are joint owners of residential plot/ house No. 418, Sector 22, Urban Estate, Gurgaon fully detailed and describe in para No. 1 of the plaint and both have ½ share each*** and the plaintiff is residing in the entire ground floor portion marked by letters AAIBCDDI shown in green and red colour, shown in site plan attach with plaint and the red portion shown in site plan on ground floor, first floor, second floor and the entire terrace over the second floor are joint and common passage, staircase and common terrace, with a decree of permanent injunction restraining the defendant No. 1 from using the first floor and second floor for any commercial/ PG purposes and further restraining from raising any construction over the common terrace in violation of sanctioned building plans and restraining the defendants to obtain/ issue occupation certificate in violation of the sanctioned building plans and from using the residential property for commercial purposes, may kindly be passed in favour of plaintiff against the defendants. Any other relief which the Hon'ble Court may deem fit and proper may also be granted to the plaintiffs.”

A perusal of the above pleadings would show that it is the case

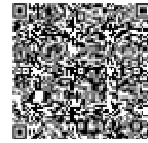


of the plaintiff that the property in question, which is plot/house no.418, Sector 22, Urban Estate, Gurgaon, is jointly owned and possessed by the plaintiff and defendant no.1, who are stated to be real brothers and a specific prayer has been made for declaration to the effect that the plaintiff and defendant no.1 are joint owners of the property in question.

7. It was the case of defendant no.1 in the written statement that there was a family settlement / partition in the form of affidavit / agreement which had been arrived at on 04.06.2001. The said plea of there being a family settlement is stated to have denied by the petitioner. A counter claim for mandatory injunction and permanent injunction had been filed by defendant no.1 seeking to demolish the kitchen and store constructed by the plaintiff/petitioner in the rear portion of the house and other reliefs were also sought.

8. From the pleadings of the parties, it is apparent that the moot point in the present case which is to be finally adjudicated during the course of trial is “whether the suit property is still joint or whether partition regarding the same had already taken place”.

9. On 18.07.2022, before any plaintiff witness was examined, an application for amendment under Order 6 Rule 17 CPC was filed by the petitioner for amendment of the plaint. In the said application for amendment, it was specifically stated that defendant no.1 had started harassing the plaintiff and his family members endlessly and was bent on grabbing more than his share in the suit property and in order to end the



frequent disputes, the plaintiff wanted to add the relief of partition by way of amendment in the plaint. It was further stated that it is settled law that any co-sharer can get the joint property partitioned at any time by filing a suit for partition. It was stated that allowing the amendment application would help in avoiding multiplicity of litigation and would further help in resolving all the disputes between the parties. Paragraphs 5A, 5B, 5C, 7 as well as prayer clause which are sought to be added by way of amendment application, are reproduced hereinbelow:-

“5A That plaintiff and defendant No. 1 are co-owners in possession to the extent of ½ share in the suit property i.e. House No. 418, measuring 220 square meters (263.12 sq. yds.), Sector 22, Gurugram. Plaintiff and defendant No. 1 had become owners of the suit property vide registered conveyance deed bearing Vasika No. 3840 dated 18.06.2002 which had been executed by HUDA i.e. defendant No. 2 in their favour.

5B That defendant No. 1 has evil eye on the ½ share of the plaintiff in the suit property and he wants to grab more than his share. Defendant No. 1 has been harassing and taunting the plaintiff and his family members by creating unrest and nuisance in the house with completely malafide motives.

5C There remain frequent disputes regarding the user and enjoyment of the suit property which is still joint and unpartitioned. Defendant No. 1 is a strong headed person having no regard of law while the plaintiff is simple, peace loving and law abiding person. Defendant No. 1 wants to forcibly oust the plaintiff from the suit property; to arbitrarily, unilaterally and forcibly raise unauthorized construction on the joint property in order to harm the

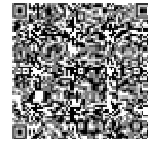


interest of the plaintiff and to somehow grab the plaintiff's share. Plaintiff has every right to get his share separated by partition by metes and bounds. No partition of the suit property by metes and bounds has taken place and the suit property continues to be joint and un-partitioned wherein plaintiff and defendant No. 1 have ½ share each. The stand of defendant No. 1 in his counter claim is totally false and frivolous. The plaintiff requested defendant No. 1 to peacefully partition the suit property and to separate his ½ share therein but he refused to do so in the beginning of July, 2022 leaving the plaintiff with no other option but to seek partition.

7. That the value of the suit for the purposes of jurisdiction and court fee for reliefs of declaration, permanent injunction and partition is fixed at Rs. 200/- each. Proper court fee of Rs. 75/-affixed on the plaint.

Prayer:-

It is therefore, most respectfully prayed that a decree for declaration with consequential relief of permanent injunction to the effect that plaintiff and defendants are joint owners of residential plot / house No. 418, Sector 22, Urban Estate, Gurugram fully detailed and described in para No. 1 of the plaint and both have ½ share each and the plaintiff is residing in the entire ground floor portion marked by letters AA1BCDD1 show in green and red colour, shown in site plan on ground floor, first floor, second floor and the entire terrace over the second floor are joint and common passage, staircase and common terrace, with a decree for permanent injunction restraining defendant No. 1 from using the first floor and second floor for any commercial/PG purposes and also to pass a decree for partition by metes and bounds ordering that the



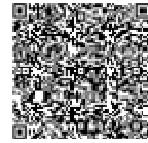
½ share of the plaintiff in the aforesaid suit property be partitioned and separated and they be put in exclusive possession of the portions falling to their respective shares. It is alternatively prayed that in case for any reason this Hon'ble Court comes to the conclusion that partition of the suit property by metes and bounds is not practical, in that event, a fair value of the suit property be fixed and the plaintiff and defendant No. 1 be given option to purchase the respective share of each other at such fair market value and it is further alternatively submitted that if for any reason even that does not materialize, in that event, the suit property be directed to be sold privately / through court at the best price and the ½ share of the sale proceeds be given to the plaintiff and defendant No. 1 equally. Any other relief which this Hon'ble Court deems appropriate and suitable be also granted to the plaintiff."

The said amendment application was disallowed by virtue of the impugned order dated 01.12.2022 primarily on the ground that the same would change the entire nature of the case and would also result in withdrawal of the admission which had been made by the petitioner in paragraph 2 of the plaint.

10. The amendment sought is very necessary for proper and final adjudication of the case. The reasons given in the impugned order are unsustainable. Once it is the case of the plaintiff that the property in question is in joint ownership and in possession of the owners and declaration to the said effect is also sought, then, in case the plaintiff is able to succeed on the said plea, then, grant of partition by metes and bounds or in the alternate option to purchase the share of others or to sell the property



to distribute the price, is the relief to which the plaintiff would be entitled to. In the said circumstances, the amendment sought in order to add the relief of partition and the other alternate reliefs cannot even remotely be stated to be changing the nature of the suit. The primary issue in the present suit, as has been stated hereinabove, would remain the same i.e., “whether the property in question is still joint or not”. In case the plea of defendant no.1 to the effect that the partition has already taken place is held to be true, then, in all likelihood the plaintiff would not succeed in the case. On the other hand in case it is proved that the property is joint and no partition has taken place, then, the plaintiff would be entitled to grant of relief of partition or the other alternate reliefs which have been prayed for in the amendment application and thus, by virtue of the amendment, the matter would be finally adjudicated. Although the plaintiff could have sought the said relief at the initial stage but a perusal of the application dated 18.07.2022 would show that it was specifically stated that defendant no.1 had started harassing the plaintiff and his family members endlessly and the request of the plaintiff to peacefully partition the suit property was refused by the defendant no.1 in the beginning of July 2022 and in order to put an end to the frequent disputes, the prayer for partition was sought immediately after the refusal by the defendant no.1. Thus, the reasons given for seeking partition are specifically detailed in the application and had occurred immediately before filing the application for amendment. At any rate, it is not in dispute that no plaintiff evidence has been examined as of yet and



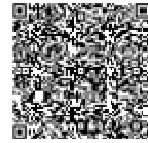
thus, the trial is at an initial stage. Moreover, any delay in the proceedings would primarily prejudice the plaintiff as it is the plaintiff who has filed the suit for declaration and is now seeking the relief of partition also. The amendment would help in avoiding multiplicity of litigation and would also help in fully and finally adjudicating the case. The plea raised by respondent no.1 to the effect that the plaintiff should file a separate suit in fact goes against the established principle of avoiding multiplicity of litigation, moreso between the same parties.

11. Further it is a matter of settled law that at the time of deciding the application for amendment under Order 6 Rule 17 CPC, the Court is not required to adjudicate the plea proposed and is primarily required to consider as to whether the amendments are necessary for determining the real question in controversy. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.** reported as **2006(2) RCR (Civil) 577**. The relevant portion of the said judgment is reproduced hereinbelow:-

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

xxx xxx xxx

17. While considering whether an application for amendment should or should not be allowed, the Court should not go into



the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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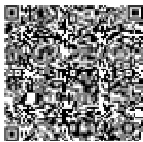
Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in [Sampath Kumar vs. Ayyakannu and Another](#), (2002) 7 SCC 559.

12. This Court is of the opinion that the amendment sought is very necessary for the proper and final adjudication of the case and the Court does not wish to opine on the merits of the amendment sought, which would be considered by the trial Court at the stage of final adjudication. The observation made in the impugned order to the effect that allowing the amendment would result in withdrawal of admission made in paragraph 2 of the plaint is also misconceived, inasmuch as, no amendment of paragraph 2 has been sought. Moreover, the plaint is to be read as a whole and at any rate this Court has found the amendment to be necessary in the facts and circumstances of the present case.



13. In the judgment of the Co-ordinate Bench of this Court in the case of *Jaspal Kaur and another (supra)*, relied upon by learned counsel for respondent no.1, the facts are completely different. In the said case, the petitioners therein who had challenged the order rejecting the application for amendment had not placed on record the plaint or the amendment application or reply filed thereto by the defendants therein and the plea sought to be raised by the petitioners therein by virtue of the amendment was with respect to pleading of compromise dated 04.04.2006, which had apparently been arrived at prior to the filing of the suit, as in the said suit, consequent sale deed dated 23.08.2006 was challenged. Moreover, the said plea of compromise was contrary to the case set up by the plaintiffs therein in the suit. The Co-ordinate Bench of this Court in the said circumstances had observed that as per the alleged compromise the plaintiffs therein were admitting the Will executed by Dial Singh in favour of Charan Kaur subject to transfer of 8 bighas of land in favour of plaintiff no.2 therein whereas in the suit the plaintiffs had challenged the Will in favour of Charan Kaur and also consequential mutation. In the said circumstances it was found that the plea raised by the plaintiffs therein by virtue of compromise was in complete contradiction to the case set up in the plaint. On the other hand, in the present case, the plea of seeking partition and other alternate reliefs is in consonance with the already made prayer of declaration that the property in question is in joint ownership of the plaintiff and defendant no.1.

14. Keeping in view the above said facts and circumstances, the



CR-140-2023(O&M) 14

present revision petition is allowed and the impugned order dated 01.12.2022 is set aside and the application filed by the petitioner for amendment is allowed. Needless to say that the defendants would be granted liberty to file amended written statement to the amended plaint.

15. It is however clarified that the observations made in the present order are only for assessing the legality or otherwise of the order dated 01.12.2022 vide which the application filed by the petitioner under Order 6 Rule 17 CPC was dismissed and should not be construed as an expression on the merits of the main suit, which the trial Court would decide independently, in accordance with law.

(VIKAS BAHL)
JUDGE

November 26, 2025.
Davinder Kumar

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