

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225****CR-4859-2024 (O&M)****Date of decision: 12.05.2026****Jasbir Singh and others****...Petitioner(s)****Vs.****Udham Singh through LR's and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Harish Goyal, Advocate
for the petitioner.

Mr. Vikram K. Bishnoi, Advocate for
Mr. Mandeep K. Saajan, Advocate
for respondent No.2.

Mr. Rai Singh Chauhan, Advocate and
Mr. Rohit Sapehiya, Advocate
for respondents No.5 to 7.

NIDHI GUPTA, J.

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the plaintiffs seeking setting aside of the order dated 1.2.2023 (Annexure P/1) passed by the Ld. Civil Judge, Junior Division, Kharar; whereby application filed by the petitioner under Order 6 Rule 17 CPC for amendment of plaint has been dismissed; **and** order dated 17.7.2024 (Annexure P/2) passed by the Ld. Civil Judge, Junior Division, Kharar, whereby second application filed by the petitioner under Order 6 Rule 17 CPC has been dismissed being not maintainable.

2. Brief facts of the case in chronological order are as follows: -



14.08.2018: Petitioners had filed Civil Suit (Annexure P-5) on 14.08.2018 for declaration et cetera.

29.01.2020: On 29.1.2020, Petitioners filed instant application (Annexure P-3) under Order 6 Rule 17 CPC seeking amendment of plaint.

Nil: The respondents/defendants filed reply dated nil (Annexure P-6) to the aforesaid application of the petitioner.

01.02.2023: Vide first impugned order dated 01.02.2023 (Annexure P-1), the said application dated 29.01.2020 filed by the petitioners under Order 6 Rule 17 CPC has been dismissed.

10.03.2023: Petitioners then filed second application dated 10.03.2023 under Order 6 Rule 17 CPC (Annexure P-4), now seeking amendment of plaint that prayer for symbolic possession of the suit property be added.

17.07.2024: Vide second impugned order dated 17.07.2024 (Annexure P-2), the second application of the petitioners under Order 6 Rule 17 CPC has been dismissed, being not maintainable.

3. Hence, present Revision Petition.

4. Learned counsel for the petitioners *inter alia* submits that trial is at preliminary stage and issues are yet to be framed. As such, Trial Court could not have dismissed the applications of the petitioners in a summary manner.

5. It is further submitted that the order dated 01.02.2023 (Annexure P-1) has been passed by the learned Trial Court without giving proper hearing to the petitioners. Therefore, as the above said order had been passed without hearing the petitioners, as such, petitioner was



constrained to file another application for amendment seeking symbolic possession. It is contended that both the applications were almost similar; and could therefore, not have been dismissed by learned Trial Court as being not maintainable. Moreover, by way of the said applications, petitioners only want to add alternative relief. In fact, the plot at the spot is a vacant plot. So, actual physical possession is very difficult to ascertain. Accordingly, although suit has been filed for declaration as owners in possession, however given the above facts, alternative relief of possession has to be added. Even though plaintiffs are still claiming that they are still in possession. Thus, first application for amendment was filed. However, the said application was dismissed vide order dated 01.02.2023. As such, petitioners had moved second application seeking amendment to the effect that plaintiffs may be given symbolic possession.

6. Learned counsel submits that the Hon'ble Supreme Court in **Life Insurance Corporation of India vs. Sanjeev Builders and another 2023(1) RCR Civil 851**; has held that liberal view ought to be taken when amendment is sought prior to commencement of trial. However, learned Trial Court has failed to appreciate this legal principle. Moreover, learned Trial Court has also failed to appreciate that first application was dismissed without hearing the petitioners. Second application has been dismissed only due to reason that the first application is already dismissed. So basically on merits, applications have not been decided

properly. It is accordingly prayed that the present Revision Petition be allowed; and the impugned orders be set aside.

7. *Per contra*, learned counsel for respondents vehemently oppose submissions advanced on behalf of the petitioners and submit that impugned orders suffer from no error. The first application has been dismissed by learned Trial Court after giving due hearing to learned counsel for the petitioners. Impugned orders have been passed very much in the presence of learned counsel for the petitioners. The story has been concocted by the petitioners only as no challenge was laid to the order dated 01.02.2023. It is accordingly prayed that the present Revision Petition be dismissed.

8. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the petitioners.

9. The record reveals that a preliminary decree had been passed in favour of the respondents on 28.02.2008. Thereafter, Local Commissioner was appointed, and share was divided amongst the parties; whereupon final decree was passed on 14.01.2014. Pursuant thereto, possession was delivered to the respondents in execution proceedings. It is at this stage; petitioners filed the present Civil Suit on dated 14.8.2018 (Annexure P-5) seeking decree of:

“Suit for declaration to the effect the Judgement and Decree dated 14/1/2014, further amended vide order dated 30/4/2015, passed in the Civil Suit titled as 'Udham Singh Versus Surjit Singh', Civil Suit No. RT 162/13-6-08 decided on 14/01/2014, decided by



the Court of Sh. Bhupinder Mittal, PCS, CJD, Kharar, is null and void being obtained on the basis of fraud played upon the court; **and further suit for declaration** to the effect that the plaintiffs are owner in possession of the plot measuring 16 Marla bounded as North: Shemrock School (49'6"), South: Road (49'6") East: Surinder Singh, Harjit Singh and Parminder Singh (88'), West: Smt. Prem Lata W/o Madan Lal (88'), as shown in yellow colour in the rough site plan, which was given to the share of Udham Singh (defendant No.1) vide Judgment & Decree dated 14/01/2014; **and further suit for declaration** to the effect that Sale deed No.4233 Dated 9/7/2018 and Sale Deed No.4234 dated 9/7/2018, got registered by defendant No.1 Udham Singh in favour of defendant No.5 to 7 is illegal null and void, qua the rights of the plaintiffs and having no effect on the rights of the plaintiffs. Further **Suit for Permanent Injunction** restraining the defendants from interfering into the peaceful possession of the plaintiffs over the plot measuring 16 Marla bounded as North: Shemrock School (49'6"), South: Road (49'6") East: Surinder Singh, Harjit Singh and Parminder Singh (88'), West: Smt. Prem Lata W/o Madan Lal (88'), shown in yellow colour of the rough site plan. **Alternatively** if this Hon'ble Court comes to the conclusion that for one reason or the other main relief sought cannot be granted, although there is no reason for the same, then a **decree for possession of the plot** shown in Red Colour, which is in possession of the defendant No.8 as well as plot shown in Blue colour, which is in possession of the defendant No.9, after demolishing the building constructed on the spot, as per the Judgment and Decree dated 14/1/2014, may kindly be passed."

10. A bare reading of the above shows that petitioners are seeking a declaration as 'owners in possession' of the suit plot. Reading of the said head note also shows that petitioners have already made



alternative prayer therein for decree of possession in case the Court comes to the conclusion that suit property is in possession of the defendants. Yet, petitioners had moved first application dated 29.01.2020 (Annexure P-3) seeking to add following alternative relief in the head note of the plaint: -

"Alternatively, if this Hon'ble Court has come to the conclusion that plaintiffs are not in the possession (Although Plaintiffs are in possession), since plot is a vacant plot, then a decree for possession may also be passed in favour of the plaintiffs."

11. Petitioners have been unable to explain the above anomaly. Moreover, the defendants had filed written statements stating that plaintiffs are not in possession of single inch of the suit property; and that no new facts have come to the knowledge of the plaintiffs regarding possession which would justify the amendment. Defendants had also pointed out in their written statement that they are already in actual physical possession of the suit property on the basis of judgment and decree dated 14.01.2014. Thus, petitioners were seeking to fill the lacunae in their case; which is impermissible as per law.

12. Grant of the said prayer would also change the basic nature of the suit as well, as original suit of the plaintiffs is for declaration. The legal position in this regard is very clear. The Hon'ble Supreme Court in **Basavaraj v. Indira (SC): Law Finder Doc Id # 2510571**; has held as under: -



“A. Civil Procedure Code, 1908, Order 6, Rule 17 - Amendment of pleadings - Initially, the suit was filed for partition and separate possession - By way of amendment, relief of declaration of the compromise decree being is null and void was also sought - The same would certainly change the nature of the suit, which may be impermissible.”

13. As regards the second contention of the petitioners that the order dated 01.02.2023 (Annexure P-1) was passed without hearing the petitioners which necessitated filing of second application; the said argument is absolutely baseless and factually incorrect. Perusal of the impugned order dated 01.02.2023 (Annexure P-1) shows that the said order has been passed in the presence of learned counsel for the applicants/plaintiffs/ the petitioners herein; and after hearing learned counsel for the petitioners. In fact, in para 1 of the said order, the learned Trial Court has categorically recorded as follows: -

“Case called several times, during the day but neither the defendant no.2 nor on behalf of the defendant no.2 anybody appeared in the court. It is already 4:30 PM. As such, defendant no.2 is proceeded against ex-parte. Ld. Counsel for the defendant no.8 made a statement that the reply to application under Order 6 Rule 17 CPC filed on behalf of the defendant no.4 be read as it is on behalf of the defendant no.8.”

14. Further, submissions on behalf of the petitioners are duly recorded by learned Trial Court in paras 3 and 4 of the order dated



01.02.2023. Thus, it is clear that impugned order has been passed after hearing learned counsel for the petitioners, and in his presence.

15. Relevant findings of Civil Judge (Junior Division), Kharar are contained in para 11 of the order dated 01.02.2023, which reads as under:

“That the plaintiff has filed the suit originally stating that the suit for declaration to the effect that the plaintiffs are owners in possession and now in the amendment the plaintiff is stating that if the court comes to the conclusion that the plaintiffs are not in possession then decree of possession may be passed with these two contradictory relief that the plaintiff is seeking he cannot blow hot and cold at the same time, however, he is allowed under the law to take consonant relief but not the ones that are poles apart from each other. Earlier the plaintiffs have filed the suit for declaration to the effect that plaintiffs are owner in possession of the suit property but now they are seeking possession of the suit property as alternate relief which will completely change the basic nature of the suit, which is against the basic provision of Order 6 Rule 17 CPC, thus no such amendment can be allowed. The defendant/respondent is already in the actual physical possession of the suit property on the basis of judgment and decree dated 14.01.2014. Therefore, I am of the opinion that the application under Order 6 rule 17 CPC should not be allowed.”

16. I find no infirmity whatsoever in the abovesaid reasoning of the learned Civil Judge in order dated 1.2.2023.



17. Further, the ostensible reasons cited by the petitioners for necessity to file second application under Order 6 Rule 17 CPC are given in paras 5 and 6 of the present Revision Petition, which read as under: -

"5. That the order dated 1/2/2023 (Annexure P/1) was wrongly passed, without hearing the plaintiffs. In fact earlier this case was listed on 17/1/2023. Then the case was adjourned to 1/2/2023, for filing reply by the defendant no.2, 5 to 7. On 1/2/2023, Ld. Trial Court has waited for defendant No. 2 till 4:30 pm and thereafter he was proceeded against ex-parte. Further Ld. Trial Court has recorded the statement of defendant no.8 that reply filed by defendant No.4 could be read as reply on his behalf. Thereafter Ld. Trial Court has decided the application under Order 6 Rule 17 CPC. However, there is no occasion for the plaintiff to make submission after 4:30 PM. So, in other words, plaintiff could not be able to address his arguments on the issue. The order dated 1/2/2023 was passed without hearing the plaintiff. In fact, even vide order dated Id. Trial Court has held that defendant/respondent is already in the actual physical possession of the suit property on the basis of Judgment and decree dated 14/1/2014.

6. That thereafter although plaintiff can prefer the revision petition before this Hon'ble Court, but since the order was passed without hearing the plaintiff, as such plaintiffs have filed the another application for amendment, basically seeking symbolic possession, as the Id. Trial Court has already held that defendants were in possession of the suit property. A copy of the application for seeking amendment of the plaint is attached herewith as Annexure 4/1/2014 P/4."



18. Notwithstanding the averments made hereinabove, it is admitted by the petitioners that vide the second application (Annexure P-4), petitioners were seeking to alter the initial amendment for 'alternative relief of possession' and now add prayer for 'symbolic possession' of the plot in question. It is my view that this was done as the respondents had pointed out that they were in possession of the suit plot. Moreover, the petitioners had once again sought to fill lacunae in their case as petitioners had failed to file Revision Petition against the order dated 01.02.2023. It is also not disputed that no new facts have come to light. Rather the position existing at the time of filing of suit on 14.8.2018; was existing at the time of filing of first application dated 29.1.2020; and same position was existing at time of filing second application dated 10.03.2023 (Annexure P-4). Even further, second application is an abuse of process of law when the first application under the same provision already stands dismissed.

19. Accordingly, the second application came to be dismissed by the Civil Judge (Junior Division), Kharar vide impugned order dated 17.07.2024 (Annexure P-2); relevant extract of which order is as follows: -

"After hearing counsels for the parties and perusing the record file, this court has observed that on an earlier occasion as well, an application under Order 6 Rule 17 of CPC was moved by learned counsel for applicant/plaintiff on behalf of plaintiff and same has already been decided by learned predecessor of this court vide orders dated 01.02.2023 and admittedly, the said orders have not been challenged by plaintiff till date. Upon being asked, learned counsel for



plaintiffs has submitted that he was not heard over the earlier application under reference and that is why, he has filed instant second application but clearly, the same is against the norms of law because he was supposed to challenge the orders of the court dated 01.02.2023, qua which revision is maintainable and now, at this stage, this court cannot review the earlier order dated 01.02.2023. However, it is relevant to observe here that the present application under reference is result of clever drafting on the part of learned counsel for plaintiffs because now, he has tried to reflect on record that they claim symbolic possession of the suit property as well despite the fact that they claim themselves to be in physical possession of the suit property. Pertinent to mention here that the contents of the earlier application moved by plaintiff on record reflect that they had tried to incorporate the relief of possession, in alternative to the main relief, while claiming that the plaintiffs are in possession of the suit property, but if the court comes to a conclusion that they are not in possession, then they be held entitled for possession of the suit property. Qua all these facts, particular findings have already been given by learned predecessor of this court vide orders dated 01.02.2023 and therefore, as rightly contended by learned counsels for the defendants, present application under reference is not maintainable at this stage. As such, the application under reference stands dismissed and case is adjourned to 21.08.2024 for arguments on stay application.”

20. No infirmity is found in the impugned orders.

21. In view of the above, the present Civil Revision stands
dismissed.

21. Pending application(s) if any also stand(s) disposed of.

12.05.2026

Divyanshi

Whether speaking/reasoned:
Whether reportable:

(NIDHI GUPTA)

JUDGE

Yes/No
Yes/No