



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

**110**

**CR-4225-2022 (O&M)**

**Date of Decision : 07.05.2025**

RAJIV KUMAR

... Petitioner

VERSUS

ASHOK GUPTA AND ORS

... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

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

Mr. Ajay Kumar Gupta, Advocate for respondents No.1 and 2.

**ALKA SARIN, J. (ORAL)**

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 08.09.2022 (Annexure P-7) passed by the learned Civil Judge (Junior Division), Ganaur whereby the application filed, at the initial stage, by the plaintiff-petitioner under Order VI Rule 17 CPC read with Section 151 CPC for amendment of the pleadings was dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for mandatory injunction and for consequential relief of permanent injunction with *mesne* profits. In the plaint it is claimed that the plaintiff-petitioner is exclusive owner and in possession of the properties having Nos.422-A, 422-B and 422-C situated at Railway Road, Ganaur, Tehsil Ganaur, District Sonipat within M.C. Limit of Ganaur vide release deed No.3962 dated 26.02.2018. Copy of the said release deed was also appended

with the plaint. Along with the plaint an application under Order 39 Rules 1 and 2 CPC was filed. Written statement along with reply to the application under Order 39 Rules 1 and 2 CPC was filed. The application under Order 39 Rules 1 and 2 CPC was dismissed by the Trial Court vide order dated 20.08.2019. Aggrieved by the same an appeal being CMA-90-2019 was preferred by the plaintiff-petitioner in which he made a statement that he was not seeking possession. The said appeal was dismissed by the First Appellate Court vide order dated 27.09.2019. Still aggrieved, the plaintiff-petitioner filed a revision petition being CR-4232-2022 before this Court which was also dismissed vide order dated 29.09.2022 passed by this Court.

3. The present application under Order VI Rule 17 CPC seeking amendment of the plaint was filed before framing of the issues. The plaintiff-petitioner wants to amend para No.15 i.e the prayer clause of the plaint and to substitute the words “*and to handover actual possession to the plaintiff*” with the words “*and be directed to hand over actual encroached area with metes and bounds to the plaintiff*”. Reply was filed to the said application. Vide the impugned order the amendment application was dismissed. Hence, the present revision petition by the plaintiff-petitioner.

4. Learned counsel for the plaintiff-petitioner would contend that the case is still at the initial stage and hence the application under Order VI Rule 17 CPC for amendment of the pleadings, to the extent as stated above, ought to have been allowed by the Trial Court.

5. *Per contra*, learned counsel for the defendant-respondents No.1 and 2 would contend that before the Trial Court, in the application under Order

39 Rules 1 and 2 CPC, a specific statement was made by the plaintiff-petitioner himself that it is not a suit for possession and that he is not claiming possession of the suit property. It is further the contention of the learned counsel that the true owner of the property has not been impleaded as a party and that an FIR has been lodged against the plaintiff-petitioner qua this very property by the original owner. It is still further the contention of the learned counsel that a civil suit is also filed by the original owner and hence the present application ought to be dismissed on the ground of concealment of facts and being *malafide*.

6. Heard.

7. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India V/s Sanjeev Builders Private Limited & Anr. [2023 (1) RCR (Civil) 851]** has held as under :

*“70. Our final conclusions may be summed up thus:*

*(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.*

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use*

*of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided*

*(a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

*(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*(iv) A prayer for amendment is generally required to be allowed unless*

*(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

- (ii) *the amendment changes the nature of the suit,*
- (iii) *the prayer for amendment is malafide, or*
- (iv) *by the amendment, the other side loses a valid defence.*
- (v) *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) *Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) *Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment*

*could be allowed and the issue of limitation framed separately for decision.*

*(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta*

*v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).*”

8. In the present case the only amendment sought by the plaintiff-petitioner is reproduced hereinabove. No doubt that the plaintiff-petitioner had earlier made a statement that the suit is not for possession and that he is not claiming possession of the suit property, however, now amendment is being sought and that too at the initial stage before framing of the issues wherein possession is being sought. The amendment would not in any manner cause any injustice to either of the parties. The arguments of the learned counsel for the defendant-respondents No.1 and 2 that the application for amendment was rightly rejected since the same was filed by concealing material facts and with *malafide* intention, deserves to be rejected. The argument of the learned counsel for defendant-respondents No.1 and 2 that since the true owner has not been impleaded as a party, therefore, the application itself is *malafide*, is not a question to be gone into at this stage but is a question to be gone into at the time of trial. As stated above, the suit is still at its initial stage inasmuch as issues are yet to be framed.

9. In view of the above, the present revision petition is allowed, and the impugned order dated 08.09.2022 (Annexure P-7) is set aside. The application under Order VI Rule 17 CPC filed by the plaintiff-petitioner for amendment of the pleadings is allowed.

10. It is made clear that since the suit is now one for possession, the plaintiff-petitioner would be bound by the provisions of law and the Court Fees Act, 1870.

11. Needless to say, any observations made herein shall not be treated as an expression of opinion on the merits of the case.

12. Pending applications, if any, also stand disposed off.

07.05.2025  
*Aman Jain*

(ALKA SARIN)  
JUDGE

*NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: Yes/No*