

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****CR-2706-2025(O&M)****Date of decision: 05.05.2025****Kamal Kumar****...Petitioner(s)****Vs.****Satnam Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vipin Mahajan, Advocate  
for the petitioner.

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**NIDHI GUPTA, J.**

Present petition has been filed by the plaintiff under Article 227 of the Constitution of India seeking quashing of impugned order dated 18.02.2025 (Annexure P7) passed by learned Additional District Judge, Gurdaspur in CA No.548 of 2018 titled as "Kamal Kumar Vs. Satnam Singh & Others" vide which application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the plaint for incorporating alternate relief of possession, has been dismissed.

2. Learned counsel for the petitioner submits that the learned Lower Appellate Court was in manifest error in dismissing the application of the petitioner as it failed to appreciate that during the pendency of the litigation, the petitioner had been dispossessed from the suit property. It is submitted that even the learned trial Court has given a finding that the petitioner is not in possession over the suit property. As



such, the petitioner had filed an application for amendment of the plaint to include prayer for grant of possession. It is submitted that therefore, the application of the petitioner has been wrongly dismissed. It is accordingly prayed that the impugned order be set aside.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner and perused the case file in great detail.

5. Brief facts of the case are that on 06.11.2013, the petitioner had filed the present suit for declaration that petitioner is owner in possession of the suit property as described in the plaint (Annexure P1). The petitioner had also sought relief of permanent injunction restraining the defendants from illegally and forcibly interfering in the possession of the plaintiff as owner over the suit property. Upon notice, only respondent No.1/defendant No.1 had contested the suit. Remaining defendants were proceeded against ex parte. Vide judgment and decree dated 24.09.2018 (Annexure P2), Suit of the petitioner was dismissed with costs. Accordingly, the petitioner had filed appeal dated 18.12.2018 (Annexure P3). Along with the appeal, the petitioner had filed an application for interim relief which was declined by the learned Lower Appellate Court vide order dated 14.03.2019 (Annexure P4). However, the parties were directed to maintain status quo regarding possession over the suit property till disposal of the appeal.



6. It is the case of the petitioner that during the pendency of the appeal, the respondent no.1 had dispossessed the petitioner from the suit property. As such petitioner was constrained to file the present application dated 06.11.2019 (Annexure P5) seeking amendment of the plaint by incorporating alternate relief for suit of possession. A perusal of the application dated 06.11.2019 (Annexure P5) shows that in Para 12 thereof, it has been alleged that in the beginning of June, 2019, when the petitioner was away to Delhi for about 10 days, the respondent No.1 had *“illegally and forcibly encroached upon the suit property and raised construction in the form of Pucca shop over the suit property as shown in plan annexure “A” attached with the present application.”*; thereby implying that prior to this the petitioner was in possession of the suit property. However, the said assertion of the petitioner is not supported from the record as it is the positive finding of the learned trial court that the petitioner was never in possession of the suit property. A perusal of the judgment and decree dated 24.09.2018 (Annexure P2) shows that petitioner had claimed ownership over the suit property on the basis of a Sale Deed dated 10.04.1978 executed by one Swaran Lal. In Para 19 of the judgment and decree dated 24.09.2018 (Annexure P2), learned trial Court has recorded that *“...Since the ownership of said Swaran Lal over the suit property is not proved, thus he was not competent to sell out the same to*



*plaintiff nor he was competent to deliver its possession to him...".* Learned trial Court further recorded in Para 20 of the said judgment that:-

*"20. Furthermore, plaintiff also could not lead any cogent and convincing evidence to prove his possession over the suit property as discussed supra, thus plaintiff is also not proved to be in possession of suit property. It is also pertinent to mention here that if plaintiff would had been in possession of suit property, then definitely he would had examined some neighbour or any other person from the vicinity of suit property to prove his possession over the suit property and the fact that he is using the same since its alleged purchase, but no such person has been examined by plaintiff to prove his possession over the suit property. Thus, in this way plaintiff has even failed to prove his possession over the suit property. So, in such circumstances plaintiff is not even entitled to the relief of permanent injunction claimed by him. Since plaintiff is neither owner nor in possession of suit property, so, he also have no locus standi to file the present suit. Thus, in view of my above discussion, plaintiff is neither entitled to the relief of declaration nor he is entitled to the relief of permanent injunction claimed by him and even he also has no locus standi to file the present suit, accordingly all these issues No. 1, 2 and 4 are decided against plaintiff and in the favour of defendant.*

7. Thus, contention of the petitioner that he was dispossessed from the suit property in June 2019 during pendency of the appeal, is patently incorrect. Accordingly, the learned Lower Appellate Court has correctly dismissed the application of the petitioner and has



correctly observed that *"...If application is allowed it would even change the cause of action as well. Amendment if allowed would take its effect retrospectively and would lead to fresh trial. The appellant/plaintiff in such circumstances is seeking to subvert the findings of the lower court..."*.

8. In view of the above, present petition is **dismissed**.
9. Pending application(s) if any also stand(s) disposed of.

**05.05.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**