
(1989) 03 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2493 of 1988

Sardara Singh and another	Vs	APPELLANT
Shrimati Gulwant Kaur and others		RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1989) 03 P&H CK 0008

Hon'ble Judges : Ujagar Singh, J

Bench : Single Bench

Advocate : D.S. Chahal and Mr. F.J.S. Chahal, for the Appellant; Sumit Mahajan, for the Respondent

Final Decision : Allowed

Judgement

Ujagar Singh, J.—The Plaintiff and others revision petitioners filed a suit for declaration that they and Defendants-Respondents 2 and 3 are owners in possession of their respective shares of the land, bearing rectangle No. 11, Killa No. 8(8-0), 13/1(7-2), mentioned in the Jambandi for the year 1979-80. situated at village Daroli Bhai, Tehsil Moga, District Faridkot, with the averments that the land was owned by one Santokh Singh adopted son of Khazan Singh. Said Khazan Singh mortgaged with possession the land in suit for Rs. 850/- and mutation was sanctioned on 28-9-1924, Santokh Singh died and Defendant-Respondent No. 1 is his legal heir. Maghar Singh has also died and the Plaintiffs-Petitioners; Plaintiffs-Respondents 4 and 5 and Defendants-Respondents 2 and 3 have been in continuous possession of the suit land as mortgagees and now as owners, as more than the period of redemption has passed and the land has not been redeemed so far.

2. Defendant-Respondent No. 1 denied possession of the Plaintiffs and others and took up the plea that the suit was barred by the principles of res judicata Pending the suit, an application under Order 6 Rule 17 of the CPC for amendment of the plaint was filed, seeking amendment for relief in the alternative for

possession as owners of the suit land, on the ground that Defendant-Respondent No. 1 has alleged that she was in possession of the suit land and therefore, in case the Court finds Defendant-Respondent No. 1 to be in possession, a decree for possession be awarded

3. Learned Counsel for the Petitioners urges that amendment has been sought only with the possibility of possession being found in favour of Defendant-Respondent No 1. The Petitioners are not to lead any evidence on any controversy and once amendment is allowed, the case be argued even on the evidence produced by the parties on the issues already framed, particularly when no evidence will be required as a result of amendment of the plaint.

4. The learned Counsel for Defendant No. 1 urges that the amendment will change the nature of the suit at the fag end of trial of the suit and therefore, the amendment should not be allowed. He has cited the case of Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , and AIR 1927 18 (Privy Council) In Panchdeo Narain's case (supra), in the plaint an admission was made; in as much as the Plaintiff described himself in the plaint as a son of the uterine brother of one person and subsequently the Plaintiff wanted amendment, seeking deletion of the word "Uterine" from the plaint. The amendment was allowed, but in revision the High Court set aside this order. The apex Court held that the High Court ought not to have interfered in its revisional jurisdiction, as in order to effectively adjudicate upon the dispute, the amendment of the pleadings was necessary.

5. In Ramsaran Mandar's case (supra) it was held that change of notice of the suit, as framed, was not permissible by way of amendment and even if it were, such a course cannot be permitted in appeal to the Privy Council, as the Defendant affected by such amendment must have an opportunity to rebut new cause of action, the course which would involve a fresh written statement and fresh trial.

6. The facts of both the cases are not applicable to the facts of the case in hand. From the facts of the instant case, rather, it is in the interest of justice that whatever the dispute between the parties, is required to be settled in this very litigation so as to avoid another litigation if the declaratory suit is dismissed for want of prayer for consequential relief. The Plaintiff revision Petitioner claimed that they are in possession and it is only in the alternative that in case they are not found to be in possession, a decree for possession be awarded. The prayer sought is not based on different cause of action.

7. With the foregoing observations, the revision is accepted; order of the trial Court is set aside and the amendment prayed for is allowed. No costs.

8 The parties are directed to put in appearance in the trial Court on the 27th day of March, 1989.