

(1993) 04 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2886 of 1992

Krishan Singh

APPELLANT

Vs

Prem Singh and Another

RESPONDENT

Date of Decision: April 20, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 115

Citation: (1993) 105 PLR 394

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: S.D. Sharma and Rajinder Sharma, for the Appellant; R.N. Moudgil, for the Respondent

Final Decision: Allowed

Judgement

V.K. Jhanji, J.

As per the case of the petitioner, Bua Ditta and Janak Singh came to Punjab from Pakistan and were allotted land on request. Janak Singh died and his sons who came into possession of the premises, vacated the premises on 15.1.1989. Bua Ditta also died, but his sons refused to vacate the portion of the premises which led to the filing of a suit for mandatory injunction. In the suit, it was claimed that Janak Singh and Bua Ditta were the licences and after their death, their sons and daughters also became licensees and licence in their favour having been revoked, they be directed to deliver the vacant possession of the premises to the petitioner. The suit was contested by the respondents on various grounds, including maintainability of the suit. They also claimed that they became owners by adverse possession.

2. The trial Court found that Bua Ditta and Janak Singh were the licensees, but dismissed the suit on the ground that after their death, their legal heirs would not become the licensees. The trial Court was also of the view that suit for mandatory injunction was not competent and only a suit for possession would lie. The

judgment and decree of the trial Court was challenged by the petitioner before the first appellate Court in appeal which is stated to be pending. During the pendency of said appeal, an application under Order 6, Rule 17 of the Code of Civil Procedure, was filed by the petitioner for amendment of the plaint so as to convert the suit for mandatory injunction into one for possession and also to include the relief of possession. On contest, this application was dismissed on the ground that the same was filed at a belated stage, and it would change the entire subject matter of the suit and that the case would be re-opened. This order is being impugned by the petitioner in the present revision petition.

3. After hearing learned counsel for the parties, I am of the view that this revision petition deserves to succeed. I am not in agreement with the view of the Additional District Judge that the proposed amendment would change the nature of the suit. The suit was filed for mandatory injunction, claiming respondents to be licensees. The relief in the suit was for a direction to deliver the possession. The trial Court did find them to be in possession, but dismissed the suit only on the ground that after the death of Bua Ditta, his legal heirs would not be termed as licensees. Now by including the relief of possession, the status of the respondents is not being changed. What is now being claimed is only relief of possession, which the petitioner would be entitled to if he can prove that he is the owner of the property in dispute. As far as respondents' claim that they became owners by adverse possession is concerned, the same is still to be considered in appeal which is stated to be pending before the first appellate Court.

4. Consequently, the revision petition is allowed and the first appellate Court is directed to permit the petitioner to amend the plaint, whereafter it shall proceed with to decide the suit in accordance with law. For seeking this amendment the plaintiff-petitioner shall pay a sum of Rs. 1000/- as costs to the respondents.