

**(2008) 05 P&H CK 0047**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

Mukhtiarra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** May 13, 2008

**Acts Referred:**

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

**Citation:** (2008) 4 CivCC 343 : (2008) 152 PLR 73 : (2009) 1 RCR(Civil) 549

**Hon'ble Judges:** Ranjit Singh, J

**Bench:** Single Bench

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### **Judgement**

Ranjit Singh, J.

The amendment of the plaint as sought by the petitioner is declined by the trial Court and the same is impugned through the present revision petition.

2. The petitioner had filed a suit for permanent injunction claiming that property in dispute was mortgaged to him before partition and since the mortgage has not been redeemed, the petitioner has become owner in possession of the property. Subsequently, respondent No. 3 was also added as a party and he has filed a written statement. The parties have led evidence in the suit and it was fixed for argument and rebuttal when the petitioner moved an application seeking amendment for taking up the plea of adverse possession. He now wants to amend the plaint to say that he is in possession and the same has become adverse and hostile and thus it has ripened into ownership due to lapse of time. The amendment as sought has been opposed on the ground of maintainability of the application as well as on the ground of delay in making such a move to seek amendment. The trial Court has declined the prayer of the petitioner on the ground that the trial has commenced long ago and the proposed amendment was within the knowledge of the petitioner and thus this amendment cannot be allowed at this belated stage. It is further noticed that it is a simple suit for injunction which the petitioner had filed to seek protection of his possession and no declaration was sought. By way of amendment,

the petitioner in fact was seeking declaration from the court about he being owner of the suit property by way of adverse possession and hence it amounted to changing the nature of the suit and cause of action.

3. Though at one stage, Mr. Arun Palli, learned Senior counsel had raised an objection in regard to maintainability of such a plea by saying that a person cannot file a suit for declaration claiming ownership on the basis of adverse possession of immovable property. This, the counsel says, may be available as a defence to protect the possession.

4. The counsel for the petitioner took time to make submissions in this regard. The counsel for the petitioner would dispute this proposition of law as laid down in [Bhim Singh and Others Vs. Zile Singh and Others](#), and has referred to certain judgments in support of his plea. Mr. Palli, on the other hand, submits that the amendment as sought need not be tested on that ground and cannot be allowed simply because amendment as sought would not be within the purview of Order 6 Rule 17 CPC. According to Mr. Palli, the petitioner by moving this application for amendment is wanting to introduce entirely different cause of action and he cannot be allowed to substitute this present cause for a cause as originally pleaded in the suit. In support of his submission, Mr. Palli has referred to State of A.P. and Ors. v. Pioneer Builders A.P. 2006(4) CCC 668. It is observed in this case that one distinct cause of action cannot be substituted for another nor the subject matter of a suit can be changed by way of an amendment.

5. No doubt, it is true that the court at any stage can allow amendment to either party but such amendment can only be allowed if the same is necessary for the purpose of determining real question in controversy. It is rightly pointed out that initial suit filed by the petitioner is for permanent injunction and no relief of declaration is sought. By amendment, the entire cause and the relief now sought would be changed which would amount to pleading a distinct cause of action. It is to be noticed that the suit was filed in the year 2000 and at this belated stage when it is fixed for arguments, petitioner is wanting to introduce altogether a new cause which can not be permitted. The plea of Mr. Kshetarpal that he would not lead any evidence and that the issue in this regard is already framed, in my view, would not be sufficient to permit amendment at this belated stage. The relief of injunction was sought on the basis that the petitioner is owner of suit land on the basis of a mortgage which he now totally wants to change to say that he has become owner by way of adverse possession. He may not need to lead any evidence on this aspect, but it certainly would required another issue to be framed on which the respondent may wish to lead evidence. If the claim is based on mortgage deed, then the issue of redemption would also arise which with the changed cause would not appear relevant.

6. The amendment, as such, apparently does not fall within the four corners of Order 6 Rule 17 and as such has been rightly declined by the trial Court. I have not

been able to persuade myself to interfere in the impugned order on any valid ground or consideration. Dismissed.