

Tarun Bahl and Another Vs Suman Bahl and Another**Civil Revision No. 207 of 2013**

Court: High Court Of Punjab And Haryana At Chandigarh**Date of Decision:** Feb. 14, 2013**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17#Constitution of India, 1950 " Article 227

Citation: (2013) 170 PLR 178**Hon'ble Judges:** T.P.S. Mann, J**Bench:** Single Bench**Advocate:** Deepak Sharma, for the Appellant;**Final Decision:** Allowed

Judgement

T.P.S. Mann, J.

Order passed by Civil Judge (Junior Division), Gurgaon on 25.10.2012, while allowing the application filed by the

plaintiffs under Order VI Rule 17 C.P.C. for amendment of their plaint, has been challenged by the defendants by filing the present revision under

Article 227 of the Constitution of India. In their suit, the respondents pleaded that their son Tarun Bahl-petitioner No. 1 was married to Parminder

Bahl-petitioner No. 2. Immediately after the said marriage, both the petitioners started creating problems for the respondents and in order to buy

peace, the respondents allowed the petitioners to live separately on the ground floor, while the respondents kept on occupying the first and second

floors of the house. It was agreed that none of the parties would interfere in the life of the other. However, a year later, the petitioners again started

creating problems for the respondents. They would lock the main gate from inside and not allow the respondents and their other family members to

enter the house. Accordingly, it was pleaded by the respondents that the petitioners be restrained from causing any hindrance, interference and

nuisance against the peaceful enjoyment of their property at first and second floors of the house.

2. The suit was resisted by the petitioners on the ground that both of them were having job in corporate sector and had no time to indulge into any

such activities mentioned by the respondents. Rather, the respondents and their other son Shailender were creating nuisance and the suit had been

filed only by the other son of the respondents in order to usurp the entire property and to oust the petitioners therefrom.

3. On an application filed by the respondents under Order XXXIX Rules 1 and 2 C.P.C. ad interim injunction stands issued in their favour

restraining the petitioners from causing any interference or hindrance against peaceful enjoyment of first and second floors of the house by them.

Subsequent thereto, the respondents filed an application under Order VI Rule 17 C.P.C. for amending their plaint on the ground that after filing of

the suit, various mediation efforts were made which remained unsuccessful on account of the act and conduct of the petitioners. On 16.3.2012, the

petitioners illegally and unlawfully stopped water supply to the first and second floors of the house and broke the electricity fixtures. The petitioners

had been creating nuisance by not allowing the respondents and their other son to park their car inside the house. In view of their consistent

harassment at the hands of the petitioners, it had become necessary for the respondents to have possession of the ground floor also which was in

occupation of the petitioners, more so, when on account of their old ages, they were not able to climb stairs and in order to fulfill their daily

requirements, they were required to come down a number of times. Accordingly, they prayed for amending the plaint so as to incorporate para

No. 6-A in the following manner:-

That the defendants have made the lives of the plaintiffs a hell. The defendants have been indulging in all sorts of activities like stopping of water

and electricity to the 1st and 2nd floor of the house. The defendants have been acting in defiance of stay order passed by Court. On 16.3.2012,

the defendants stopped the water supply to the floors of the plaintiff and they broke the cover of electricity fixtures. The defendants have not been

allowing the plaintiff and their other son to park their car inside the house. Further the plaintiff's are old aged persons and are suffering from various

ailments. The plaintiffs bonafidely need and require the ground floor for their own use. The plaintiffs are not in position to climb stairs number of

times in a day to fulfill their requirements. At all times the plaintiffs are living in apprehension of denial of the amenities to them by the defendants.

The defendants have no right, title or interest to occupy the ground floor shown in the green colour in the site plan in House No. 1267, Sector 15,

Part-II, Gurgaon. The plaintiffs do not want to lead miserable life at such old age and they crave for directing the defendants to hand over the

peaceful and vacant possession of the ground floor and the portion attached thereto in the house in question under their occupation to the plaintiffs.

The defendants are in illegal and unlawful possession of the ground floor and they have no right, to remain in occupation of the same. The

defendants are liable to pay mesne profits @ Rs. 25,000/- per months alongwith interest to the plaintiffs.

4. The respondents also sought to amend the prayer clause by adding sub-para to it in the following manner:-

It is further prayed that your honour may be pleased to direct the defendants to hand over the peaceful, actual and physical vacant possession of

the ground floor shown in the green colour in the annexed site plan of House No. 1267, Sector 15, Part-II, Gurgaon alongwith all facilities area

and appurtenances attached thereto under their occupation and the defendants may be further directed to leave the house in question at their own

cost and expenses. It is further prayed that to direct the defendants to pay a sum of Rs. 25,000/- per month as mesne profits to the plaintiff from

the date of filing of the present application till actual payment alongwith interest @ 18% per annum.

5. The application under Order VI Rule 17 C.P.C. filed by the respondents was objected to by the petitioners by submitting that it was only an

abuse of the process of law. The proposed amendment would completely change nature of the suit from permanent injunction to the possession.

The alleged cause of action for both the alleged reliefs was totally different and could not be mixed under the garb of amendment of the plaint.

6. Having heard counsel for the petitioners, this Court finds that the plaintiffs-respondents are entitled to seek amendment of the plaint in order to

bring on record the subsequent developments between the parties. The suit property remains the same, i.e. ground floor of the house which house

stood allotted in the name of Suman Bahal plaintiff/respondent No. 1. In such a situation, the plaintiffs/respondents cannot be barred from adding

the relief of possession also. By doing so, the parties would avoid multiplicity of the suit. Even otherwise, as is clear from the impugned order

passed on 25.10.2012, the defendants/petitioners had not filed their written statement till then. In such a situation, no prejudice would have been

caused to them by allowing the plaintiffs/respondents to amend their plaint and also claim relief of possession.

7. After hearing counsel for the parties and perusing the material placed on the record, the trial Court vide impugned order allowed the application

under Order VI Rule 17 C.P.C. In view of the above, there is no merit in the revision, which is, accordingly, dismissed.