

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1108 of 2014
Date of Decision: November 4, 2015

Poonam Chand

..... Petitioner

Versus

Amar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vinod S. Bhardwaj, Advocate
for the petitioner.

Mr. Sunil Panwar, Advocate
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The petitioner-plaintiff is in revision against the impugned order whereby an application seeking amendment of the plaint at the rebuttal stage has been declined.

Learned counsel appearing on behalf of the petitioner submits that the amendment sought would not alter the nature of the suit, much less cause of action as the injunction has been sought with respect to boundary wall reflected as mark ABCD in the site plan which falls within that area.

He further submits that the prayer clause of the plaint inadvertently could not be placed on record instead the previous page containing paragraph 11 and 12 have been attached.

In view of such situation as amendment was sought in the head note of the plaint and insertion of para 5-A is essential and necessary for the proper adjudication of the *lis* between the parties.

He further submits that the petitioner-plaintiff would not lead any fresh evidence as the evidence in this regard, has already been lead. In case, he is able to prove his settled possession, he would be entitled to seek injunction. In support of his contentions, he has relied upon the judgments in **Buagapu Meenakshi Vs. Satya Panigrahi and another 2014 (4) Andh LD 621, Suraj Parkash Vs. Waqf Khudaband Tala Mausooma 2013 (2) CivCC 268 and Amar Ujala Publicaitons Vs. Rajiv Prashar 2010 (4) CivCC 620.**

Learned counsel appearing on behalf of the respondents-defendants submits that the application at the outset is not maintainable as it does not confer the statutory requirement of law. In essence, the expression “despite exercise of due diligence” has not been specifically pleaded, rightly so, the trial court rejected the application. The alleged claim, much less disputed claim of injunction has been seriously disputed by the petitioner-plaintiff and seriously contested. Thus, prays that there is no illegality and perversity in the impugned order, therefore the revision petition be dismissed.

I have heard learned counsel for the parties and appraised the paper book.

No doubt, after coming of the amendment in the

Code of Civil Procedure in 2002, the party has to specifically plead and aver the expression “despite exercise of due diligence”. The application Annexure P-3 is though wanting such particulars. However, on going through the application seeking amendment of the plaint, it is evident that the appellant has sought the amendment, which in my view, is most innocuous and would not alter the nature, much less cause of action of the suit. The application is conforming to the principles of seeking amendment of the plaint particularly, with regard to the lines which are sought to be incorporated as specifically been mentioned. Thus, the expression “exercise of due diligence” in my view, would not fetter the case of the respondents-defendants. The respondents-defendants would be able to prove from the evidence available on record whether the petitioner-plaintiff had actually been in possession of the property shown in the site plan which is marked as ABCD.

Keeping in view the aforementioned facts, the trial court in my view, has not taken into notice the aforementioned facts while dis-allowing the application.

In view of the facts and circumstances narrated above, the application seeking amendment of the plaint is allowed. The petitioner-plaintiff is permitted to file amended plaint. On filing the amended plaint, the respondents-defendants shall file amended written statement. Thereafter the trial court shall proceed with the trial i.e. from the stage it was listed in accordance with law.

It is made clear that since the petitioner-plaintiff has undertaken not to lead a fresh evidence, he would not seek

indulgence of the trial court by making separate application.

The revision petition is allowed subject to payment of costs of ₹5,000/-.

It is made clear that the payment of costs would be condition precedent before filing the amended plaint.

(AMIT RAWAL)
JUDGE

November 4, 2015
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