

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1576 of 2015

Date of Decision.04.03.2015

Narinder Kumar and others

.....Petitioners

Versus

Savita Gupta and others

.....Respondent

Present: Mr. Rakesh Gupta, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J. (ORAL)

1. The defendant is aggrieved that an amendment in the plaintiff has been allowed for bringing an additional evidence regarding the alleged encroachment of the year 2010 after institution of the suit and for prayer for recovery of possession. The suit as originally filed is for declaration and for injunction and the defendant would point that the plaintiff had already filed an application for amendment in the year 2009 which is allowed in the year 2013 and the plaintiff had also examined himself in chief and cross-examination was completed even in June, 2014. Only when PW2 was sought to be examined and when affidavit was filed by the defendant on 01.08.2014, the application for amendment of the plaint and for rejection of affidavit as beyond pleadings was moved and at that time the plaintiff has tried to make good the lack of pleadings by bringing an amendment. The counsel says that the amendment if it were to be allowed, it would require

amendment of the written statement as well and it will only further prolong the proceedings. It will also require further cross-examination to be made.

2. The Trial Courts ought to evolve some disciplined time line in the manner in which proceedings are conducted before them. It is a pity that many of the amendments which were brought through after lot of discussions from various quarters in the year 1999 and 2002 by Act of 46 of 1999 and Act 50 of 2002 have registered very little difference in the manner in which the trial courts conduct their trials. There was an important amendment in Order 6 Rule 17 which disallowed any amendment after commencement of the trial except in situations where there was very serious prejudice and there was sufficient explanation given. In a situation where the plaintiff would state that there was an encroachment by the defendant in the year 2010, that was after the institution of the suit and the case was taken up in 2014 with a prayer for injunction, the Court should have been reluctant for any modification or amendment in the pleadings except under grave situations. If it was allowing an amendment, it must notice at least the provisions of law which dictate the circumstances when such amendments are possible. I am surely not convinced about the decision of the Court to allow for such an amendment but I would still make no intervention now, for the prejudice of what has happened would only be a prejudice for prolongation of trial. The appropriate remedy before the trial Court would have been to either disallow the application or impose costs at least on the plaintiff for being remiss in his conduct and causing delay at the trial. In this case now, if revision under Section 115 CPC is not

possible and if an intervention is to be done under Article 227, I will limit the jurisdiction for intervention only to examine whether very serious prejudice is caused by such exercise. If there is prayer for recovery of possession as well, the prayer that can be possible for being granted or not will normally be seen only in the context of whether the claim is itself barred by limitation to sue for recovery of possession. The suit is within five years from the time when the alleged encroachment was said to have been caused and the issue of limitation simply does not arise.

3. I will find no cause for intervention. The revision petition is dismissed with the above observations.

(K. KANNAN)
JUDGE

March 04, 2015
Pankaj*