

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1983 of 2015

Date of decision : 15.12.2015

Kailash Chand Virmani

...Petitioner

Versus

Satish Chander @ Satish Chand and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Kul Bhushan Sharma, Advocate for the petitioner.

Mr. Alok Jain, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The petitioner-plaintiff is aggrieved of the order dated 19.02.2015, whereby application for amendment of the plaint, has been dismissed.

Mr. Kulbhushan Sharma, learned counsel appearing on behalf of the petitioner-plaintiff submits, that originally civil suit no.137 dated 03.07.2013 for permanent injunction and mandatory injunction as a consequential relief has been filed on the basis of the family settlement which has been pleaded in para No.8 of the suit and when suit reached the stage of plaintiff's evidence, it revealed that due to inadvertence, declaration vis-a-vis property mentioned in the family settlement has not been sought. Since there is no limitation to seek declaration qua title, an

application in this regard was moved, which has been erroneously dismissed. No prejudice would be caused in case amendment is allowed as it help the Court in adjudication of the lis.

Mr. Alok Jain, learned counsel appearing on behalf of respondents-contesting defendants submits, that amendment if allowed would change the nature of the suit. The trial Court has rightly declined the application as the plaintiff had not sought any relief with regard to the property bearing shop No.126 and prays for dismissal of the revision petition.

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

Para No.8 of the unamended plaint reads thus:-

“8. That in terms of the said settlement dated 27.08.2011 Annexure 'D' is was settled as under:-

- i) That the shop No.162 will be vacated and handed over to Sh. Kailash Chander which is in possession of Satish Chander and Radhey Shyam.*
- ii) I Satish Chander Virmani and Radhey Shyam Virmani we both will pay Rs.10,00,000/- to Sh. Kailash Chander till December 2011 in lieu of shop No.126 and he will have no claim in the said shop.*
- iii) The rent from the shop in 1D/18 will be valued and its 1/3rd portion will be paid to Sh. Kailash Chander;*
- iv) Valuation of the said shop will be done on its net value.*
- v) The rent will be paid from Ist November 2011 till that time Sh. Kailash Chander will be paid Rs.10,000/- per month by Sh. Satish Chander and Sh. Radhey Shyam.*

vi) *And if we brothers (Satish Chander, Radhey Shyam and Kailash Chander) raises quarrel then action against will be taken.”*

The relief sought in the aforementioned suit reads thus:-

“a. grant permanent injunction against the defendants permanently restraining them from (carrying the) renovation/repair/construction etc. On the shop in the suit property (through their agents, servants, contractors etc.)

b. (Grant the consequential relief of mandatory injunction) by direct(ing) the defendants to refurbish the 'suit property' portion of the plaintiff to the condition as it was earlier and to return the documents of shop No.162 of the plaintiff which are illegally retained by the defendant No.1.

c. direct the defendants to pay the cost of litigation to the plaintiff.

d. Pass any such further order as it may be deemed fit and property by this Hon'ble Court.”

In the application for amendment, the petitioner has sought the indulgence of this Court to seek the amendment by adding para 9-A and as well as amendment of title suit, much less, relief clause. The amendment sought reproduced thus:-

“4. That the plaintiff is seeking amendment of the title of the suit as one for declaration as well besides injunction. The title will read as under: “Suit for declaration with consequential relief of permanent and mandatory injunction.

5. That Para 9 A is sought to be added that in partial performance of the settlement dated 27.08.2011, Annexure D, the defendants have vacated and put plaintiff in possession of shop No.162 but have failed to comply with

remaining conditions of the settlement dated 27.08.2011 and the plaintiff seeks performance by the defendants of the remaining conditions of the settlement ibid.

Grant a decree for declaration that the plaintiff is the owner to the extent of 1/3rd share in shop No.126 and by way of consequential relief the plaintiff be put in joint possession of shop No.126 and further to pay interim rent of shop No.1-D/18 to the extent of Rs.10,000/- per month towards share in the shop from 27.08.2011 to 1.11.2011 and rent to the extent of 1/3rd share w.e.f. 2.11.2011 till date at the market rate of rent Rs.60,000/- per month being recovered by defendants No.1 and 2 from the lessee of the shop. The share of the plaintiff being 1/3rd to the extent of Rs.20,000/- per month.”

In my view, the amendment sought is most innocuous and would not alter and change the nature of the suit. There is no illegality in the application seeking to incorporation relief of seeking declaration of the title and mandatory injunction. The declaration has been sought on the basis of terms and conditions of the family settlement, though disputed by the respondent-plaintiff. It would be matter of evidence being invited question of law whether family settlement was in existence or not. There is another aspect of the matter, the suit is at the stage of the plaintiff's evidence and if the amendment is allowed, it would not tantamount to denovo trial.

Keeping in view the aforementioned observations, impugned order is hereby set aside. Application for amendment is allowed.

Revision petition stands allowed.

15.12.2015

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**(AMIT RAWAL)
JUDGE**