

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CR-3831-2014

Amar Singh

..... Petitioner

Versus

Pargat Singh

..... Respondent

2. CR-3830-2014

Amar Singh

..... Petitioner

Versus

Pargat Singh

..... Respondent

Date of decision: 30.1.2015

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. Hardeep Singh, Advocate
for the petitioner (in both cases).

Mr. DS Gurna, Advocate
for the respondent (in both cases).

R.P. NAGRATH, J.

By this common order, CR-3831-2014 and CR-3830-2014
are being disposed of as these revisions have been filed against the same
order passed by the learned trial Court. In CR-3831-2014, prayer is made

for setting aside the order dated 1.4.2014 passed by the trial Court whereby the application under Order VI Rule 17 of the Code of Civil Procedure (CPC), filed by the plaintiff-respondent for amendment of the suit was allowed and the second revision (CR-3830-2014) is also against the same order whereby the application filed by the defendant-petitioner for dismissal of the suit has been declined. For brevity, the facts are being extracted from CR-3831-2014.

2. Initially, the suit was filed by the plaintiff-respondent for permanent injunction restraining the defendant-petitioner from blocking/making any kind of hindrance/construction over the passage marked as ABC shown in the site plan. The plaintiff-respondent claims that he is owner in cultivating possession of the land comprised of khasra Nos. 824 and 825. The defendant-petitioner purchased land bearing khasra Nos. 819 and 820 from the previous owner. It was stated in the plaint that there is a passage marked by letters ABC as an approach to the land belonging to plaintiff and there is no other passage apart from the above to the plaintiff's land. The grievance of the plaintiff-respondent was that the defendant-petitioner wanted to close that passage by constructing a wall with an intention to increase area of his own property. The plaint is dated 30.9.2011.

3. In the written statement filed by the defendant-petitioner, it was denied that there exists any such passage marked by letters ABC. The petitioner rather pleaded that he has been wrongly impleaded as a party in the instant suit because the land comprised of khasra Nos. 819 and 822 was purchased by Smt. Mahinder Kaur, wife of defendant-

petitioner on the basis of sale deed dated 23.8.2011 from the previous owner. After purchase of the land, Smt. Mahinder Kaur, constructed a boundary wall marked by letters A-AI as per site plan attached with the written statement and that boundary wall is more than 3 feet in height. She has also constructed a kotha on the southern/remote side, which is far away from the alleged passage. The approach to the land, tubewell and house of the plaintiff-respondent is from the other side and that passage is very short and convenient which the plaintiff-respondent was using for the past so many years. The alleged passage as claimed by the plaintiff-respondent and allegedly shown in the *Aks Latha* and site plan is not existing at the spot. The written statement filed by defendant-petitioner is dated 29.11.2011 (Annexure P-3).

4. The plaintiff-respondent filed an application dated 29.11.2011 (Annexure P-5) under Order VI Rule 17 CPC for amendment of the plaint. It was contended that at the time of filing of the suit, the trial Court had restrained the defendant-petitioner from blocking and raising any construction over the passage. However, on 11.10.2011 at about 12 O' clock, the defendant-petitioner with the help of one Pappu Khan S/o Chajju Khan, blocked the passage at Mark A as per site plan attached with the application by constructing a wall despite the stay order. This allegation was sought to be supported by a photograph attached with the application. It was stated that the defendant-petitioner wanted to sell the aforesaid land and he also affixed a sign board on the passage by writing "Land for Sale". The matter was also reported to the police. In view of the alleged subsequent events, the plaintiff-respondent

wanted to delete the relief for permanent injunction and make a prayer for mandatory injunction directing the defendant-petitioner to remove the wall/construction from point A shown in the site plan and also to make consequential amendments. It is not denied that application for violation of the breach of injunction order has already been filed by the plaintiff-respondent under Order 39 Rule 2-A read with Section 151 CPC.

5. The defendant-petitioner also filed an application for dismissal that relief in the suit originally filed is infructuous, in view of the admission of the plaintiff-respondent.

6. I have heard learned counsel for the parties and carefully perused the impugned order as well as the records.

7. The case is still at the initial stages and, therefore, the proposed amendments seeking to incorporate the subsequent events have been rightly allowed by the trial court. It would be a question to be adjudicated upon during the trial of case as to whether changes have been made during pendency of the suit or the construction was already existing. There was no scope of summarily rejecting the prayer made in the application for amendment. If the construction is existing at the spot and now the prayer has been made for mandatory injunction to remove the construction, there is no question of contending that nature of the suit is likely to be changed because the subject matter of the suit remains the same. The factum that defendant petitioner is not owner of the property or that the same is owned by his wife and he has no concern with the same, is a question to be determined during the course of trial and not at the initial stage. By allowing the amendment application, it would not

amount to accepting the plea that changes have been made after the filing of suit and despite the stay order. Learned trial Court has exercised its discretion, in view of the facts and circumstances brought forth before it and such an exercise of discretion is not shown to be either illegal or perverse calling for interference of this Court.

8. Faced with the above situation, learned counsel for the petitioner vehemently contended that continuation of the suit in which the defendant-petitioner has categorically asserted that he is not owner of the property would be a sheer harassment and the trial Court should be directed to decide this as a preliminary issue.

9. I am of the view that this proposition cannot be determined in the instant revision and for that the petitioner would be at liberty to apply to the trial Court and it would be for the trial Court to dispose of the said contention/application in accordance with law. With acceptance of the application for amendment in the suit, the application filed by defendant-petitioner for dismissal of the suit on the ground that it has become infructuous thus, could not be sustained and rightly declined by the trial Court.

10. I find no ground to interfere in the impugned order. All the questions of facts which have been raised to challenge the impugned order can be agitated during the trial of the case. With these observations, both the petitions are dismissed.

11. A copy of this order be placed on record of CR-3830-2014.

January 30, 2015
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(R.P. NAGRATH)
JUDGE