

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

**CR No.5103 of 2015  
Date of decision: 09.12.2015**

Shiv Shankar

....Petitioner

Versus

Randhir Singh and others

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mrs. Gurnam Kaur Turka, Advocate  
for the petitioner.

Mr. Labh Singh Bangu, Advocate  
for respondents No.1 and 2.

**RITU BAHRI J. (Oral)**

The petitioner has come up in revision for setting-aside the order dated 07.07.2015 (Annexure P-5), passed by Additional Civil Judge (Sr. Division), Rajpura, whereby the application under Order 6 Rule 17 filed by the plaintiff for amendment of the plaint has been dismissed.

The plaintiff had filed a suit for permanent injunction and as per the site plan showing the passage as HGEFCD as kacha one and the plaintiff used to cross that passage, however when the defendants came to know about the said fact they encroached upon the said passage on 20.12.2008 after construction wall from J to B as shown in the site plan of defendants and then from point B to E and in this manner, the passage has been blocked by the

defendants.

The plaintiff wants to amend the headnote of the plaint and at the end while adding “and suit for mandatory injunction directing the defendants to remove the wall from point J to B to cross the passage from B to C encroached during the pendency of the suit.” The plaintiff further wants to add para No.6 as “That defendants after filing the present suit on 18.12.2008, constructed wall JB with mud and bricks for to cover the passage and in this way have encroached upon the passage. The passage is in existence if the wall JB is demolished even today. The wall has been raised by the defendants on 20.12.2008, after knowing about the filing of the present suit by the plaintiff, so the plaintiff is entitled for the relief of the mandatory injunction directing the defendants to remove the wall.” The plaintiff also wants to add in the last para No.7 as “The cause of action for mandatory injunction arose to the plaintiffs against the defendants on 20.12.2008 when the wall JB was raised by the defendants.” Further plaintiff wants to add after para No.8 of the plaint as “The values for the purposes of mandatory is Rs.130/- and proper Court fee has been affixed amounting to Rs.13 for mandatory injunction also.” The plaintiff also wants to amend the prayer clause by adding lines after the word “Distt. Patiala” and before the word “may kindly” that “And a decree for mandatory injunction directing the defendants for removing the wall from point J to B

duly shown in the site plan of the defendants during pendency of the suit.”

The necessary amendment is being sought after making payment of the proper Court fee for mandatory injunction as the case is at the initial stage.

The trial Court after going through the reply filed by the defendants and after perusing the same, came to a conclusion that the suit had been filed by the plaintiff on 19.12.2008 and the next date of hearing was fixed as 09.01.2009 and on that next date the defendants appeared through their counsel and filed their written statement on 29.01.2009. Thereafter, on 09.03.2009, the application for amendment was filed alleging therein that the defendants encroached upon the passage on 20.12.2008. But, 20.12.2008, was the next date of filing the suit i.e. 19.12.2008. The plaintiff neither approached the police or any other higher authorities nor any such documents were placed on record. The trial Court while dismissing the application has observed that the question of encroachment will be decided after leading evidence by both the parties and the proposed amendment will change the nature of the suit.

Learned counsel for the petitioner has referred to the judgment ***“Prithi Pal Singh and another vs Amrik Singh and others”***, 2014(1) RCR (Civil) 327, to contend that the dominant purpose of the amendment is to minimize the litigation and

through the amendment no relief was sought.

On the other hand, learned counsel for the respondent has vehemently argued that after recording of the evidence, the trial is at the stage of arguments and the amendment sought should not be allowed.

The Hon'ble Supreme Court in ***Prithi Pal Singh and another case (supra)*** has examined the case where at the stage of second appeal before the High Court, the application for amendment in the plaint claiming that the appellant was entitled to relief as a co-sharer was allowed.

The ratio of law laid down in Paragraph 10 and 11, by Hon'ble Supreme Court in case of ***Prithi Pal Singh and another case (supra)*** reads as under:-

*“10. In the case of **Sampath Kumar v. Ayyakannu and Anr., 2002(4) R.C.R. (Civil) 566 : 2002 (3) Civil Court Cases 364 (S.C.)** initially, a suit for prohibitory injunction was filed in the year 1988 claiming possession of the suit property. Later in the year 1989, an application under Order 6 Rule 17 Civil Procedure Code was made for conversion of the suit into one for declaration of the title of the suit property and consequential relief of delivery of possession alleging that during the pendency of the suit, defendant dispossessed the plaintiff in January 1989. The amendment was refused. However, in appeal before the Hon'ble Apex Court, the conditional amendment was allowed. The Hon'ble Apex Court observed as under :*

*“11. In the present case, the amendment is being sought for almost 11 years after the date of the*

*institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged in the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period about 11 years in calculating the period of time, by excluding a period of about 11 years in calculating the period prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.*

*XXX XXX XXX XXX*

*13. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed.”*

**11.** *From the ratio of the aforesaid judgments, following points emerge :*

- (a)** *Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;*
- (b)** *The dominant purpose of the amendment is to minimize the litigation;*
- (c)** *The amendment once allowed and incorporated relates back to the date of initial institution of the suit;*

*(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date of amendment is allowed.”*

Learned counsel for the petitioner further placed reliance on the judgment ***“Tara V. Ganju and another vs Basant and Co. and others”***, 2013(4) RCR (Civil) 60, to contend that the amendment in the plaint enhances the valuation of the suit. The trial Court would cease to have jurisdiction and it cannot be made a ground not to allow the amendment. The object of amendment is to avoid the multiplicity of litigation. Similar view has been followed by Hon'ble Supreme Court in ***“Abdul Rehman and another vs Mohd. Ruldu and others”***, 2012(4) RCR (Civil) 481.

In the present case, the plaintiff had filed a suit for permanent injunction alleging that the defendants should not interfere in the usage of the plaintiff's rights to passage. If any, construction, encroachment has been made by the defendants then the present amendment would be necessary.

So, keeping in view the above facts and circumstances and to avoid the multiplicity of litigation, the present revision petition is allowed and the order dated 07.07.2015 (Annexure P-5), passed by Additional Civil Judge (Sr. Division), Rajpura, is hereby set-aside.

**(RITU BAHRI)**  
**JUDGE**

**09.12.2015**

*yakub*