

CR No.59 of 2015

[1]

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

**CR No.59 of 2015
Date of decision:12.01.2015**

Birender Singh

...Petitioner

Versus

M/s Sarkaru Mal and Sons and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.S.Randhawa, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the order dated 20.10.2014, dismissing his application filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) for amendment in their written statement by way of addition of para no.4A in which he wanted to aver “*that pre-decessor in interest of the respondents that is Mohinder party no.2 entered into agreement to demolish the old building with Mohinder Singh S/o Kushal Ram and Mulakh Raj S/o Noora Ram both R/o Modal Town, Samrala Road, Khanna party no.1 vide agreement dated 12.05.2001. That as per the term of the agreement Mohinder Singh Party no.2 got demolish the building known as Guru Nanak Mill Railway Road Khanna during the life time of Mohinder Singh. The property in question is a part of Guru Nanak Mill Railway Road Khanna. That the above said*

CR No.59 of 2015

[2]

document was duly signed by the both parties in the presence of the witnesses, the witnesses also appended their signature on the writing dated 12.05.2001. That in this manner the entire building including the property in question was got demolished by Mohinder Singh during his life time”.

In brief, the plaintiff filed a suit for permanent injunction in which *ad interim* injunction was granted on 03.04.2004 which was later on confirmed on 10.01.2005. The plaintiff then filed an application under Order 39 Rules 2-A of the CPC for breach of injunction on the ground that respondents no.2 and 3 have demolished the portion shown in yellow colour in the site plan attached with the petition which is under the tenancy of the plaintiff on 27.01.2010 and further demolishing the remaining portion of the property.

Reply to this application was filed by respondents no.2 and 3 in which they had filed application under Order 6 Rule 17 of the CPC for addition of para 4-A in their reply. The said application was contested by way of reply by the plaintiff and vide the impugned order, the said application was dismissed by the learned Court below on the ground that the proposed amendment regarding execution of contract in regard to demolition of the property is not a relevant factor and moreover issues have already been framed on 18.03.2014 and the plaintiff has tendered his affidavit, meaning thereby the trial had already commenced.

Counsel for the petitioner has submitted that by way of amendment, he would prove that the predecessor-in-interest of respondent no.2 entered into an agreement to demolish the old building with Mohinder

CR No.59 of 2015

[3]

Singh and Mulakh Raj on 12.05.2001 and in terms of the said agreement, respondent no.2 had demolished the building. Thus, the entire building was demolished including the property of Mohinder Singh during his life time and this fact would also go to the root of the case.

After hearing learned counsel for the petitioner and examining the record, I am of the considered opinion that there is no error in the order of the Court below by which the application filed by respondents no.2 and 3 for amendment of their reply to the application filed under Order 39 Rule 2-A of the CPC was dismissed because in the reply they have already taken a plea that they have not violated the order passed by the Court below because it is mentioned in para 4 of the reply that they did not demolish any building when they became owners of the property and there was no such building in existence, as alleged by the applicant-plaintiff at the time when respondent no.2 became owners of the suit property as the godown along with the other structures were already demolished before the filing of the suit. Once this pleading has already been taken, the amendment which is now sought to be introduced in the reply is only a matter of evidence and as such, the application has rightly been rejected by the Court below.

Accordingly, the present revision petition is hereby dismissed being denuded of any merit.

January 12, 2015
vinod*

(**Rakesh Kumar Jain**)
Judge