

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

CR No.6332 of 2013 (O&M)
Date of decision: 23.7.2015

Amarjit Singh

..... Petitioner

Versus

Sarabjit Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurcharan Dass, Advocate, for the petitioner.

Mr. Vishal Aggarwal, Advocate, for the respondents.

RAJESH BINDAL, J

The petitioner/plaintiff has filed the present petition impugning the order dated 27.9.2013 passed by the learned court below, whereby the application filed by him for amendment of the plaint was dismissed.

Learned counsel for the petitioner submitted that the petitioner herein was a tenant in property in question under Harpreet Singh Bhatia. He sold the same to the respondents apprehending that respondents are out to demolish the same by using unfair means to evict the petitioner. The petitioner filed a suit for permanent injunction restraining the respondents from demolishing or damaging any part of the suit property. The suit was filed on 30.8.2013. When it was listed before the court, without there being any notice, defendant No.1-Sarabjit Kaur appeared through her counsel and stated that before passing order on the application filed by the petitioner under Order 39 Rules 1 & 2 CPC, defendant No.1 be permitted to file written statement and submit documents. The case was adjourned to 6.9.2013. Taking benefit of that and also holidays in between, the respondents started demolishing the building on 31.8.2013 and had been successful in their mission. Partially, a complaint was also made by the petitioner to the police, which was entered as DDR No.21 dated 1.9.2013.

Even photographs were also taken. Immediately on the next working day i.e. 2.9.2013, application was filed before the court bringing all the facts on record. Notice of the application was given to the defendants for the next day i.e. 3.9.2013. The case was again adjourned on the request of the defendants. On the other hand, they continued in their illegal design of demolishing the property. On the next date of hearing fixed i.e. 6.9.2013, the petitioner filed application under Order 6 Rule 17 CPC seeking to amend the plaint by bringing additional facts on record, which transpired after the filing of the suit and further for the issuance of mandatory injunction to the defendants to restore the property in its original position or permit the petitioner/plaintiff to do the needful at the cost of the defendants. The application was wrongly declined merely on the ground that the nature of the suit will change. The reason assigned is erroneous. The trial is yet to commence, as on the date, when the application for amendment was filed, even the written statement had not been filed by the defendants. In support of his plea, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble the Supreme Court in Abdul Rehman and another v. Mohd. Ruldu and others 2012 (4) CCC 584 and judgments of this Court in Kailash and another v. Yasina and others 2010 (1) CCC 579 and Gurmail Singh @ Kaka Singh v. Ran Singh and others 2012 (3) CCC 325.

On the other hand, learned counsel for the respondents could not dispute the fact that the stage at which the application for amendment was filed by the petitioner/plaintiff even the written statement had not been filed by the defendants. However, he disputed the fact that there was not any demolition carried out by the respondents after the filing of the suit.

Heard learned counsel for the parties and perused the paper book.

The undisputed facts on record are that the petitioner/plaintiff filed a suit for permanent injunction restraining the respondents/defendants from demolishing the suit property. When the case was taken up by the court at the first instance, defendant No.1 appeared through her counsel and stated that before any order is passed on the application under Order 39 Rules 1 & 2 CPC, she may be permitted to file written statement and the documents. The case was adjourned to 6.9.2013. It is on that day that the petitioner/plaintiff filed application seeking amendment of the plaint.

Meaning thereby, the stage when the application for amendment of the plaint was filed, the defendants had not even filed their written statement.

The petitioner/plaintiff had sought amendment of the plaint raising a plea that during the pendency of the suit, certain part of the suit property was demolished by the defendants, hence, the developments, which took place during the pendency of the suit needed to be incorporated and additional relief of mandatory injunction to be claimed. Though these facts have been denied by the defendants. This court is not going into this aspect of the matter, as the result thereof will depend upon the evidence to be led by the parties. Hon'ble the Supreme Court in Mahila Ramkali Devi and others v. Nandram (D) through LRs and others JT 2015 (5) SC 248, has opined that rules of procedure are intended to be handmaid to the administration of justice. The relief of amendment of pleadings should be granted unless, the court is satisfied that the party applying was acting malafide or that he committed such a blunder resulting in injury to the opposite party, which cannot be compensated in cost. In Abdul Rehman's case (supra), Hon'ble the Supreme Court opined that the amendments, which are necessary for the purpose of determining real controversy between the parties, should be allowed. Change in the nature of relief claimed shall not be considered, as the change in the nature of suit. Power of amendment should be exercised in larger interest for doing complete justice between the parties.

For the reasons mentioned above, the present petition is allowed. The impugned order dated 27.9.2013, passed by the learned court below is set aside. The application for amendment of the plaint filed by the petitioner/plaintiff is allowed.

(RAJESH BINDAL)
JUDGE

23.7.2015

sharmila

(Refer to Reporter)