

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

CR No. 7269 of 2013 (O&M)
Date of decision: April 9, 2015

Mehar Chand

...Petitioner

Versus

Baljit and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of 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. Ashutosh Kaushik, Advocate,
for the petitioner.

Mr. Arvind Singh, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The application for amendment was brought by the plaintiff belatedly to secure the relief of recovery of possession, while the defendants had been contending at all the times that their own construction had been made as early as in 1979 and that the plaintiff's case was that the defendants had encroached upon the property subsequently after institution of the suit. The trial had commenced and the plaintiff was purportedly using advocate Commissioner's report for bringing the amendment after suit. The court rejected the petition for amendment and the plaintiff is before this court.

2. I find there was simply no justification for the plaintiff to have persisted with the suit without a proper prayer for recovery of possession, if his contention were to be that the entry in possession of the defendants was

made only in 2010, the application for amendment was made in 2013 and that too after plaintiff's side was closed. Even the Commissioner's report had been secured on 24.5.2011 itself. By the amendment, he was literally secure to himself a scope for re-opening the evidence given already and a compulsion for the defendants to cross-examine on every aspect what they were defending, namely, that the encroachment was not made only in the year 2010 but construction was raised as early as in 1979.

3. The court has observed that the benefit of the plaintiff's prayer for recovery can still be granted without any amendment. Such an exercise is simply not possible the way trial court has observed. If there is intervention, it is only because that a separate suit would be avoided, if the amendment is ordered. This is precisely the objection the defendants have. If, according to the plaintiff, the encroachment has been caused in 2010, the plaintiff could withdraw the suit and file his own fresh suit with proper averments. The amendments are allowed only to ensure that multiplicity of proceedings are avoided. The test will always be whether any serious prejudice is caused to either party. The serious prejudice is as much as to the court, for a plaintiff who brings his own application for amendment leisurely to suit his convenience. The petitioner ought to pay the costs for the inconvenience caused. The order passed already is set aside on condition that the petitioner pays ₹25,000/- as costs to the defendants within a period of four weeks from today, failing which the order passed already shall stand restored.

4. The revision petition is allowed on the above terms.

April 9, 2015

prem

PREM SINGH
2015.04.21 10:31
I attest to the accuracy and
integrity of this document

(K.KANNAN)
JUDGE

