

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 7137 of 2014

Date of decision: 03.03.2015

Chuhar Singh

... Petitioner

versus

Harbans Singh and others

.... Respondents

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

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Present: Mr. Anuj Balian, Advocate for the petitioner.

Mr. J.S. Cooner, Advocate for the respondents.

**K.Kannan, J.**

The application for amendment was sought by the plaintiff in a suit for injunction against the respondent No.4 from putting any construction. The injunction application appears to have been dismissed and an appeal was also dismissed.

The application for amendment was made to make reference to alleged subsequent event of the respondents trespassing into the property and putting the construction. The petitioner is therefore sought to include the relief of mandatory of injunction for removal of the construction. The contention in defense was that the property is not a passage as stated by the petitioner in respect of which injunction was sought but it was their own property and that, therefore, mandatory injunction cannot be granted. The court below dismissed the petition holding that the petition is belated.

I have elicited from the petition that apart from filing of an affidavit after the pleadings were complete, the actual trial by examination of witnesses have not started. If the plaintiffs were seeking for relief of mandatory injunction on a plea that new construction has been made the tenability cannot be tested by the respondents defense

that the property is his own personal property and that the construction is not an authorized, that be a point of adjudication at the trial and cannot be used to dismiss the petition for amendment. More so, it was stated to be an even subsequent of the institution of suit, the impugned order is set aside. I allow for the amendment to be made in the manner sought for and the respondents will have an opportunity to file an affidavit or written statement, insofar as the averments brought through the amendment is concerned. Additional issues will be framed and the case is directed to disposed of in accordance with law, in the manner referred to above.

The civil revision petition is allowed.

**(K.KANNAN)**  
**JUDGE**

03.03.2015

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