

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

CR No.7784 of 2015

Date of Decision: November 20, 2015

Krishan Kumar

.... Petitioner

vs.

Smt. Harjit Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vijay Lath, Advocate for the petitioner.

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 23.07.2015 passed by learned Addl. District Judge, Hoshiarpur, vide which the application of the plaintiff under Order VI, Rule 17 CPC for amendment of the plaint during the adjudication of the appeal, was dismissed.

Briefly stated, plaintiff filed a suit for permanent injunction before the lower court for restraining the defendants from demolishing the wall marked as AB and the roof marked as ABCD shown red in the site plan, situated in Mohalla Guru Nanak Nagar, Hoshiarpur and for mandatory injunction directing the defendants to close the 'hole'/opening marked 'X' made in the wall AB and in the alternative restraining them to not to obstruct the plaintiff from closing the opening 'X' in the wall AB. The suit of the plaintiff was dismissed by the lower court.

The plaintiff preferred an appeal before the learned Addl. District Judge, Hoshiarpur, wherein the application for amendment of the plaint was filed to add para No.8-A, which is reproduced as under:

“That more than 60 years back the predecessor-in-interest of the defendant filed a suit for mandatory injunction against Surjan Dass, plaintiff's father in respect of the same disputed wall titled as “Bela Singh Versus Surjan Dass”. This suit was decreed against Surjan Dass on 29-5-1950 and he was directed to demolish the said wall within 15 days of the passing of the decree. This decree was never executed against the plaintiff or his father till this date. The said decree has now become time barred and the defendants are now estopped from tampering with the disputed construction in any manner whatsoever. The defendants now cannot be allowed to take law into their own hands to temper with the disputed wall endangering the roof resting on the wall. This roof in dispute was raised after the passing of the decree and the defendants never raised by objection”

The application was dismissed by the learned Addl. District Judge, Hoshiarpur, vide impugned order.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

It comes out that the said facts were within the knowledge of plaintiff. The suit has already been decided. Now the appeal is pending. In the appeal, the plaintiff cannot be allowed to reopen the

case so as to put the clock back. By way of amendment, the plaintiff wants to plea certain facts, which will require evidence.

Learned counsel for the petitioner has relied upon the following authorities:

1. "Abdul Rehman and Anr. vs Mohd. Ruldu and Ors.", 2012(4)RCR(Civil)481.
2. "Pankaja and another vs Yellappa (D) by L.Rs. and others", AIR 2004 Supreme court, 4102.
3. "C.M. Vereekutty vs C.M. Mathukutty", 1981 AIR (SC) 1533.
4. "Smt. Kailashpati Devi and another vs Jamuna Prasad Jaiswal and others", 2012(4) CivCC,168.
5. "Sadhu Singh vs Balvir kaur and others", 2014(9) R.C.R. (Civil) 2989.
6. "Boya Pikkili Venketaswamy vs Boya Ramakrishnudu", 2013(2) ALT, 214.
7. "Jamni Dass vs Jugal Kishore", 2001(1) R.C.R. (Civil) 318.
8. "Wattu vs Jaimal", 2002(1) R.C.R. (Civil) 760.
9. "Krishan Kumar Pareek vs State Bank of India and others", AIR 2009 (Orissa) 100.

It has been pressed that the amendment, which is necessary for just decision of the case, should be allowed.

I am of the view that under the provisions under Order VI, Rule 17 CPC, after trial has commenced, the amendment is not to be allowed in routine. The law relating to the amendment, the pleadings before the appellate court is not that liberal when the facts sought to be brought on file by way of amendment were within the knowledge of the plaintiff or come to his knowledge during the pendency of the

trial before the lower court and he had opportunity to amend the pleadings before the lower court. Such amendment is not be allowed by the lower court.

No ground is made out to interfere in the impugned order.

Accordingly, the present revision petition stands dismissed.

November 20, 2015
sarita

(KULDIP SINGH)
JUDGE