

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.7963 of 2014 (O&M)

Date of decision: 17.09.2015

Manpreet Singh

.....Petitioner

versus

Surinder Singh and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjeev Sharma, Advocate for the petitioner

Mr.H.S.Dhindsa, Advocate for the respondents

- 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)

Challenged in the present revision is the order dated 3.11.2014, passed by the learned Civil Judge, Junior Division, Nabha, vide which, an application of the plaintiff under Order 6 Rule 17 CPC for amendment of the plaint was dismissed.

By way of amendment, the plaintiff wanted to plead that in the month of February 2014, the defendants in connivance with each other, have encroached upon the site of the passage marked as ABCD in the site plan, illegally and forcibly and therefore, plaintiff seeks mandatory injunction, directing the defendants to vacate the site of said passage.

I have heard learned counsel for the parties and have

also carefully gone through the file.

While dismissing the application, the lower Court has made the following observations:-

Heard. Record perused. Perusal of the record shows that the present application is not based on the correct facts and has been filed by the applicant/ plaintiff just to render the report furnished by Local Commissioner dated 24.9.2014 ineffective and infructuous. This Court has reached to this conclusion because as per the present application, the plaintiff is alleging that the defendants have encroached upon the site of passage shown as mark ABCD in the site plan in the month of February 2014, but the defendants in their written-statement dated 10.1.2009, have taken the stand that the portion ABCD as shown in the site plan produced by the plaintiff is part and parcel of property of the defendants which means that since the appearance of the defendants in the present suit they are claiming that aforesaid portion ABCD as shown in the site plan of the plaintiff is part and parcel of their land and even they filed an application under Order 26 Rule 9 CPC for appointment of Local Commissioner in the Court on 9.9.2013 and said application was duly contested by the plaintiff, if on the date of filing of said application dated 9.9.2013 there was no encroachment/ construction of said portion shown as ABCD on the spot made by the

defendants (as plaintiff alleged in present application that said encroachment was made in February 2014), then the plaintiff should not have contested the said application and should have immediately submitted that Local Commissioner may be appointed, but Local Commissioner was appointed vide separate order of the Court dated 11.9.2014, who submitted his report in the Court on 24.9.2014 and it was thereafter that present application under Order 6 Rule 17 CPC has been filed by alleging that encroachment has been made by the defendants in the month of February 2014, which fact, on the basis of the aforesaid observations, appears to be factually wrong and thus it can be said that applicant/ plaintiff has not filed the present application with clean hands, so relief prayed by him in the same cannot be granted to him. Hence, the present application is dismissed.”

The report of the Local Commissioner shows that the construction is 8-10 years old. The lower Court has found that the facts mentioned in the application are factually incorrect. In any case, it was found that the construction is new one. The suit was filed in January 2009 and the application was filed on 4.10.2014 i.e. about five years and eight months after the filing of the suit. In the written statement, defendants had already taken the stand that the disputed site is part of their property. In this way, the application for amendment was filed after more than five years of the filing of the

suit. In this case, the issues were already framed and the case was fixed for evidence of the plaintiff. In this way, the trial had already started.

In these circumstances, when amendment is sought on the basis of apparently wrong facts, the same was rightly declined. It is always open to the plaintiff to file an appropriate separate suit for mandatory injunction. However, the amendment was rightly declined.

The revision stands dismissed.

17.09.2015

gk

**(Kuldip Singh)
Judge**