

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

CR No.1062 OF 2016 (O&M)
DATE OF DECISION : 6TH MAY, 2016

Arjun Singh & another

.... Petitioners

Versus

Haryana Urban Development Authority, Panchkula, & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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Present : Mr. S. S. Dinarpur, Advocate for the petitioners.

Mr. Abhilaksh Grover, Advocate for the respondents.

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DARSHAN SINGH, J.

1. The present revision petition has been preferred against the order dated 04.02.2016 passed by learned Civil Judge (Junior Division), Kurukshetra, whereby the application filed by the petitioners/plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter called "CPC"), has been dismissed.

2. I have heard Mr. S. S. Dinarpur, Advocate counsel for the petitioners and Mr. Abhilaksh Grover, Advocate counsel for the respondents and carefully gone through the paper book.

3. Learned counsel for the petitioners contended that the petitioners/plaintiffs had filed the suit for permanent injunction but during the pendency of the suit the respondents/defendants carried out demolition of the disputed property. He contended that due to the said demolition, which is a subsequent event, the

respondents/defendants want to add the relief of mandatory injunction and consequential amendments.

4. On the other hand, learned counsel for the respondents contended that the proposed amendment will change the nature of the suit. He contended that the petitioners/plaintiffs have encroached upon the land, which is proved from demarcation report dated 24.02.2012. Petitioners-plaintiffs have also not mentioned khasra No.21/2 and 21/9 in their plaint. Now they want to fill up the lacuna by way of amendment. Thus, he contended that the application moved by the petitioners-plaintiffs was not bonafide, moreover, the trial had already started so the application for amendment of plaint, moved by the petitioners, has been rightly dismissed by the learned trial Court.

5. I have duly considered the aforesaid contentions. This fact is not disputed that the petitioners/plaintiffs have filed suit on 22.02.2012. It is also not disputed that demolitions have been carried out by the respondents-defendants on 16.06.2013 and 29.09.2015 i.e. after the institution of the suit. So these demolitions are the subsequent events which were not prevalent at the time of filing of the suit. While dismissing the application the learned trial Court has observed that the plaintiffs have raised unauthorized construction in some other khasra numbers which is not the suit property. But as to whether the demolition has been carried out in the land belonging to the plaintiffs or not is a question of fact and is to be decided on appreciation of evidence to be adduced by the parties. If the

amendment, sought by the petitioners, is allowed that will not mean that the plea raised by him stands proved still the petitioners/plaintiffs will be required to establish their plea by leading cogent, convincing and reliable evidence.

6. I do not find any substance in the plea raised by learned counsel for the respondents that proposed amendment will change the nature of the suit. The petitioners/plaintiffs want to add the relief of mandatory injunction and the consequential facts with respect to demolition during the pendency of the suit. That amendment will not change the nature of the suit and will not cause any prejudice to the rights of the respondents.

7. The first demolition is alleged to have been carried out on 16.06.2013 but the application for amendment of plaint has been moved by the petitioners on 14.12.2015. The delay in moving the application cannot be a ground to decline the amendment of the plaint, which is, in fact, necessary to determine the real questions in controversy between the parties, but for this delay the respondents can be well compensated by costs.

8. Thus, keeping in view my aforesaid contention the present revision petition is hereby allowed. The impugned order dated 04.02.2016 (Annexure P-7) is set aside. The application filed by the petitioners/plaintiffs for amendment of plaint stands allowed, subject to costs of ₹5,000/-.

6th MAY, 2016
'raj'

(DARSHAN SINGH)
JUDGE