

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1465 OF 2016
Date of Decision: 26.02.2016

IQBAL SINGH

.....Petitioner

Vs.

LABH SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. B.S. Jaswal, Advocate
for the petitioner.

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 06.01.2016 passed by the learned Civil Judge (Junior Division), Amritsar, vide which the application moved by the plaintiff-respondents for amendment of the plaint, has been allowed.

2. Learned counsel for the petitioner contended that the plaintiff has filed the suit for permanent injunction restraining the defendant-petitioner causing any damage to the alleged exclusive wall of his house. He contended that the petitioner has also filed the counter claim along with the written statement pleading that the disputed wall was the joint wall and they had raised the construction thereupon by affixing the girders, angles etc. He further contended that the learned trial Court vide order dated 12.04.2013, has dismissed the application moved by the plaintiffs-respondents for ad

interim injunction and the application filed by the petitioner was allowed. He contended that the petitioner had already raised the construction on the disputed wall even before institution of the suit as the wall in question was a joint wall. Thus, he contended that the learned trial Court was not justified to allow the amendment of the plaint seeking the relief of the mandatory injunction as no subsequent event has taken place during the pendency of the suit and the amendment will change the nature of the case.

3. I have duly considered the aforesaid contentions. The plaintiffs-respondents have filed the suit for permanent injunction restraining the defendant-petitioner, his supporters, attorneys, nominees, agents etc. from using, damaging the exclusively owned northern wall of the house of the plaintiff from Point A to Point B shown in red in the site plan attached with the plaint. The plaintiffs-respondents filed the application under Order 6 Rule 17 read with Section 151 of Civil Procedure Code, 1908, (hereinafter, called 'CPC') for amendment of the plaint wherein it has been pleaded that after the filing of the suit, the defendant continued threatening to place girders, angles and make some construction over the disputed wall and they forcibly placed the girders and angles on the northern wall. So, the plaintiffs-respondents have sought the amendment of addition of the alternative relief of the mandatory injunction and consequent amendments in the heading of the plaint, prayer clause and addition of para No.4A in the plaint. So, the plaintiffs/respondents are seeking the amendment on the plea that the petitioner has forcibly placed the girders and angles on the disputed wall during the pendency of the suit and they want to claim the alternative relief of the mandatory injunction. Learned counsel for

petitioner alleged that the said construction was already existing. So, it is a matter of evidence as to whether the construction had been raised after filing of the suit or before the institution of the suit. Moreover, if any cause of action has arisen to the plaintiff during the pendency of the suit, being a subsequent event the amendment to mould the relief can always be allowed.

4. The Hon'ble Supreme Court in case **Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, AIR 2006 (SC) 1647**, has laid down as under:-

“15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

5. As the amendment of the plaint allowed by the learned trial Court is not going to change the basic nature of the suit, only the alternative relief is being added. It cannot be disputed that it was permissible for the respondents to file an independent suit then no fault can be found with the impugned order to permit the plaintiff-respondents to incorporate the pleadings for alternative relief of mandatory injunction in the present suit.

6. Thus, keeping in view my aforesaid discussion, the present revision petition having no merit, is hereby dismissed.

26.02.2016

SwarnjitS

(DARSHAN SINGH)
JUDGE