

Civil Revision No.1559 of 2013

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

Civil Revision No.1559 of 2013

Date of decision: 10.02.2016

Iqbal Singh

....Petitioner

Versus

Paraswaras Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers 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 ?

Present: - Mr. Vivek Salathia, Advocate, for
Mr. Ashish Aggarwal, Advocate, for the applicant.
Mr. Bikramjit Arora, Advocate, for respondents No.1 to 4.

PARAMJEET SINGH DHALIWAL, J. (ORAL)

Instant revision petition has been filed for setting aside the order dated 13.02.2013 passed by learned Additional Civil Judge (Senior Division), Amritsar, whereby the application filed by the petitioner-plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint, has been dismissed.

Brief facts of the case are that petitioner and respondents No.5 to 7 filed a suit for permanent injunction against respondents No.1 to 4 on the ground that plaintiff No.1 has constructed a residential house and is living with his family in the said house and electric meter has also been installed in the name of petitioner-plaintiff No.1. Besides this, voter identity cards have also been prepared in their names at the address

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of the property in dispute. The earlier boundary wall of the suit property was made with mud and now the plaintiffs want to reconstruct the cemented boundary wall. Plaint is drafted on 30.10.2007 and the suit must have been filed somewhere in the first week of November, 2007 as no date has been mentioned on the file. Thereafter plaintiffs moved an application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the plaint whereby plaintiffs intended to incorporate para 4-A in the plaint, which reads as under: -

“That the suit property in question originally belongs to Maggar Singh the grand-father of the plaintiffs who had constructed other properties alongwith this property before 1947 and during his lifetime Maggar Singh had divided this property among his four sons including the plaintiff. The property of Maggar Singh is divided between Surain Singh, Sohan Singh, Sardool Singh and Gurbax Singh and the present property in dispute came to the share of the father of the plaintiff Sardool Singh. The built up houses which were constructed by Maggar Singh in village Meera Kot Kalan, was handed over to Surain Singh, Sohan Singh and Gurbax Singh and the property situated outside the village, which includes Haveli measuring about 34 Marlas of Sardool Singh. Since the partition which took place before 1947, father of the plaintiff Sardool Singh used to reside in Haveli alongwith his family members as owner, whereas Surain Singh and Gurbax Singh used to reside in Pacca houses inside the village. After the death of Surain Singh son of Deen Singh and daughter Pritam Kaur used to reside in the said property in question and afterwards grandson and grand daughter sold their share i.e. the house as owners. Baldev Singh son of Grubax Singh

used to reside in the house which falls in the share of Gurbax Singh as owner. The partition between son of Maggar Singh was put into writing and same was scribed by master Puran Chand Deed Writer Meerakot Kalan.”

Defendants filed reply to the application. Trial Court after hearing the parties dismissed the application for amendment of the plaint vide impugned order dated 13.02.2013. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that the amendment sought is clarificatory in nature and plaintiffs do not want to lead any evidence in this regard. In support of his contention, learned counsel for the petitioner relied upon the judgment of this Court in ***Gurdeep Pal Singh Chads v. Municipal Corporation, Ludhiana, 2014(1) PLR 862.***

On the other hand, learned counsel for respondents No.1 to 4 vehemently contended that amendment in the plaint will create altogether a new case. There is no averment in the petition that there was ever any partition as alleged in the application for amendment of the plaint, specifically in para 4-A, which is sought to be added in the plaint. Even there is no inclining with regard to the partition in the plaint, by way of addition of para 4-A, new case is sought to be created by the plaintiffs.

I have considered the contentions raised by learned counsel for the parties.

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Admittedly, the suit is for permanent injunction. Injunction is a limited relief and no declaration can be given in a suit for permanent injunction. Here in this case, perusal of the para sought to be added by way of amendment, reproduced above, clearly indicates that plaintiffs want to set up a case that the partition was effected between the shareholders in 1947. In fact, grandfather of plaintiff No.1 had effected the said partition amongst his four sons, including father of plaintiff No.1. If the amendment is allowed, finding of declaration is required to be given whether there was, in fact, partition allegedly effected by grandfather of plaintiff No.1. Otherwise also, issues in the case were framed way back on 19.02.2008. It is settled principle of law that after commencement of the trial, except clarificatory amendments major amendments cannot be allowed. Therefore, the judgment relied upon by the petitioner is not applicable to the facts of this case.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

(Paramjeet Singh Dhaliwal)
Judge

February 10, 2016
R.S.